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A CRITIQUE OF NARVESON'S *THE LIBERTARIAN IDEA*

In this partly philosophical and partly polemical work Jan Narveson attempts to found libertarianism upon a rational contractarian base, disapproving of the intuitionism that he believes mars other approaches; he is particularly scathing of Nozick's *Anarchy, State and Utopia*, which has been disparaged by several authors, in my view unfairly, as "libertarianism without foundations". Personally, I find Nozick's opus far superior to the present one. I don't like Narveson's "teutonic" approach (of purporting to build up a logically rigorous philosophical structure from fundamentals) because once the author makes a logical error in the exegesis (and every author I've ever read makes many) everything that follows is suspect. Nozick by contrast creates a web with redundant strands, instead of a teetering pillar which can too easily become a monument to folly.

This is not to say that I agree with everything in Nozick or disagree with everything here; Narveson has many useful insights and illuminating arguments. Indeed, I tend to agree with most of Narveson's specific conclusions - but not with the way he gets there. If he had been less insistent upon philosophical purity and "rationality" I should have been far less disposed to quibble.

There are several aspects of the book I find irritating, and it would be as well to warn the reader of them in advance. The first is Narveson's notion of morality, which is not at all what most people understand by that term - some sort of absolute right and wrong, independent of human thought. Narveson's "morality" is nothing more than a prudential ethics, of what people will find it in their own self-interest to follow. It is upon this that he wishes to base libertarianism. I have no objection to such an approach, provided that it is understood that it is essentially pragmatic, compatible with many though perhaps not all underlying theories of morality, not the deep quiddity the author wishes to make it.

The second annoyance is more trivial, yet all the more niggling for that: Narveson's persistent use of "she" and "her" where most normal people would put "he" and "him". It is especially bad in the second half of the book. Surely this is not supposed to be feminist literature? If Narveson's usage is political correctness, it's contemptible; whereas if he simply thinks it's cute, he displays both ignorance and lousy taste. For one thing, it's bad grammar.

In English, the masculine pronoun can refer to persons of either sex, or of unspecified sex, and is the correct one to employ when the sex of the actor is irrelevant (as in most discussions of ethics it is). The feminine pronoun refers to persons of the female sex exclusively; "she" cannot mean "he". It *is* legitimate to use "she" and "he" to refer to different actors in a scenario, simply for clarity. In cryptology it is customary to refer to communications between Alice and Bob, along with such other characters as Eve the Eavesdropper. But Narveson has no such excuse.

One major strength of the work is Narveson's refusal, for the most part, to take the easy path of simplistic extremism that is sadly typical of many libertarian and radical writers. He recognises that life is more complicated and laws necessarily more subtle than idealists are often disposed to admit, and that the bundling of rights in any developed society is far removed from the crude caricatures of much libertarian rhetoric.

All in all, Narveson's *Libertarian Idea* will repay serious study, especially the first part, but it must be admitted that the author's analysis does not run as deep as he evidently wished, and that his exegesis of concrete libertarianism is lacking in corroborative detail. Once the fallacies have been weeded out, there is little that is startlingly new. Nevertheless, I can recommend this book, with some reservations, and in conjunction with my detailed critiques below, to anyone interested in delving below the glossy surface of libertarianism. At the very least, it will make you think.

Part One: Is Libertarianism Possible?

Chapter 1: *Liberalism, Conservatism, Libertarianism*

At the outset Narveson calls libertarianism (as he claims the term is used in current moral and political philosophy) the doctrine that the *only* relevant consideration in political matters is individual liberty. This is an extreme position and, taken literally, an absurd one. I don't suppose he does mean it to be taken literally, but all the same it's a dodgy beginning.

More serious is his grotesque distortion of the meaning of conservative (he borrows his usage from Dworkin). One of the major failings of libertarians is their persistent misrepresentation of the conservative position and a wilful refusal to address what conservatives actually say. Narveson doesn't help.

Most conservatives are no less interested in personal liberty than libertarians; they do not, in general, place any "august purpose" above the combined interests of individuals; that would not be conservatism but ideology or authoritarianism.

Conservatives recognise that human reason is weak, that radical changes often produce unexpected and potentially catastrophic side-effects, and that traditional ways of doing things have the great advantage that we already know they work. Therefore, wherever practicable, any changes should be made cautiously and reversibly. Radicals, by contrast, refuse to accept that their theories may be erroneous or disastrous in application.

Moreover, conservatives recognise that changes, especially radical changes, naturally create opposition, and that to impose them against the will of large numbers of people is both morally questionable and prudentially unwise. It can be seen throughout history how such impositions usually do far more harm than good. Thus, wherever practicable, changes should be by general agreement not force. As a libertarian conservative (or conservative libertarian) I would go further and argue that all such changes should be in accord with the current set of property rights in that society, with those who lose out being compensated by side payments or quid quo pros; that way we can be sure that the change is Pareto compliant and consequently an improvement.

It is perhaps not surprising that Narveson, as a philosopher, has an exaggerated view of the importance and reliability of logical analysis, or at least that he wants to believe he can succeed where everyone else has failed, but it is an arrogant view nonetheless, standing opposed to the scientific method, which is fundamentally conservative. By so misrepresenting conservatism he sets up a strawman as his antagonist, that will enable him later to claim as distinguishing features of libertarianism things that are nothing of the sort

Chapter 2: Liberty

In this chapter Narveson seems to be mostly on the right track, in his analysis of what is meant by freedom. It is unfortunate that he slides between the words freedom and liberty, as synonyms, without saying, or perhaps even realising, what he's doing; unfortunate because in the next chapter he makes liberty mean something different, again without admitting it.

His thesis would indeed have been clarified, and some slips averted, had he made use of the words "choice" and "choices". Thus in discussing whether the freedom of morons and schizophrenics counts he concludes that any sensible answer will inevitably spawn marginal cases we have to live with. Yet this is false. A better answer (in my view), and one that does *not* require us to draw any philosophical line between those whose freedom matters and those whose freedom doesn't matter is this: whenever and to whatever degree an entity is capable of making any sort of moral choice its freedom to make or not to make that choice matters.

The point here (in regard to clear use of language) is that a choice is concrete, identifiable, quantitative, whereas "freedom" is often vague and ambiguous. Narveson is already having to jump through unnecessary hoops on account of this ambiguity.

On page 18 Narveson talks about a "right ... of being allowed to be the ... person one is". He clearly realises that such formulations (a right or a freedom to be the person one is) are problematic, but, in attempting to reduce them to a consistent form, he rather misses the point (actually quite an important one) that no such right or freedom can exist; it is a logical nonsense. One is not free to be oneself, because one is not free not to be oneself; one could not have a right to be oneself, because one could never be otherwise. You don't have a *right* to be you; you *are* you, *simpliciter*. You are you, not as a freedom, liberty, privilege or right, but simply as a brute fact of logic.

Beyond that, Narveson's claim that freedom is fundamentally freedom to determine is I think correct, at least if by "determine" we mean to have a significant and broadly predictable impact on events; complete or perfect freedom would then allow us to determine them absolutely. Narveson also points out correctly that all freedoms are both freedom to and freedom from; many people fail to grasp this, and it all too often leads to enormous confusion.

However, in the final section, Narveson goes astray. He tries to distinguish prototypical cases, (1) Sam's arthritis prevented his playing football & (2) Sam's wife prevented his playing football, by arguing that (1) is a medical fact and (2) the result of human action. But his argument is faulty; the circumstances that lead to there being an arthritic Sam unable to play football are no less contingent upon human action than the behaviour of his wife; and the behaviour of his wife is no less contingent upon natural facts than Sam's arthritis.

Narveson says that (1) is different because "no one is to blame". But this begs the question. Why aren't Sam's parents (for example) to blame? The usual and entirely reasonable answer is that no one is to blame because no one violated Sam's rights. But this is circular. We cannot legitimately draw such a distinction unless we *first* have a valid set of rights. Yet although Narveson wants use freedom as a philosophical *basis* for such rights, we here find him illegitimately smuggling rights into the argument up front. Thus, *contra* Narveson, (1) and (2) are at this stage of the analysis and as far as freedom goes logically parallel, differing only in contingent details.

Chapter 3: Liberty: Negative versus Positive

In this chapter, following on from the slip-up at the end of the previous chapter, the author blunders badly. He tries to draw what is a quite fallacious distinction between so-called positive and negative liberty. Every freedom without exception does and must arise from a concatenation of circumstances such that one is enabled to produce or not to produce the effect in question, according to choice; as contrasted with other concatenations of circumstances such that one is not so enabled. There is no logically coherent way of separating the enabling from the disabling factors, other than by noting that certain factors tend to be present when one has the freedom and others when one hasn't.

At this point Narveson digresses to discuss slavery, but his arguments do not appear to me to have much merit, at least at this philosophical level. Thus he counters the concept of the contented slave with the claim that at least the progenitors of the slave must have been enslaved contrary to their desires at the time. But this is false; they might have voluntarily agreed, like the parents of the infant Samuel, that their children would be from birth the property of the slaveholder. More generally, the fact that most slaves would prefer to be other than slaves does not make the institution illegitimate, because much the same could be said for almost anyone. People would prefer not to have to work for a living; people would prefer to be rich. That's just life - we'd almost all prefer to have more freedom or more wealth than we do - to be in circumstances other than those that actually obtain. Slaves aren't "unfree", they merely have less freedom (fewer or poorer choices) than other people; some slaves indeed have more freedom than some "freemen".

After this digression Narveson produces what seems to me a valid argument leading "to the conclusion that any and every good is a part of or a contribution to liberty: given any good G, you are now at liberty to lead a life which includes G."

However, he immediately claims that this "seems wrongheaded" (it doesn't to me), and ties himself in knots attempting to run away from it and "limit the relevant range of liberties". He continues to use the word liberty, but with an illegitimate, arbitrary and unstated shift in meaning towards something tantamount to a right.

Thus he claims that A's refusal to play tennis with B does not interfere with B's liberty even though it may prevent him from getting what he wants. But this is just double-talk. A's refusal *is* part (and indeed a crucial part) of the set of circumstances that deny B the freedom to play tennis with A. Narveson's restrictive usage of "interfere with B's liberty" is little more than a sneaky code for "violates B's rights".

In all cases, A has the choice of a set of actions, some of which lead to B's having the specified freedom, and some of which lead to B's not having it. Except when one or other set is empty, A's choice affects (interferes with) B's freedom. The distinctions Narveson is attempting to draw are logically empty - unless one *first* has a set of rights or duties, or a baseline set of appropriate actions, upon which to base them.

Chapter 4: Two Conceptions of Liberty

Narveson notes two approaches to the political treatment of liberty; broadly, to maximise liberty; or to have people interfere with each others' liberty as little as possible. He notes that what this means needs clarifying, but the examples he gives (chosen it would appear with a view to discrediting the former) are at best flawed. They parallel common but similarly fallacious arguments against utilitarianism. It does not automatically follow from a maximising principle that if Jones is sick you ought to cure him, because that fails to take into account the effect of such actions upon the rest of the universe.

Utilitarians do not usually argue that everyone should tot up the utility (or in this case, freedom) for every possible action, rather that we should look for that set of *rules* that on balance will maximise utility.

Narveson here has missed a great opportunity to argue that the way to maximise freedom is in fact to have a set of rules of the second type (these would be the rules of property rights). This is particularly important since he lacks any moral justification for elevating the second above the first. Why should "interfering" matter if it didn't tend to reduce freedom?

Unfortunately, Narveson has also failed to define what maximising liberty or minimising interference is supposed to mean; an omission that good use of the word "choices" could have rectified, once coupled with a specification of

property rights. He is still stumbling about trying to define interference in ways that do not assume the prior establishment of such rights, and, as he dimly seems to realise, it doesn't work.

Narveson points out, correctly, that coercion is not necessarily unjustified or a violation of rights, though perhaps he has not made it as clear as he might that coercion is a *threat* to bring it about that the coerced person's options are worse than in the status quo ante, *in order* to induce that person to behave in ways he otherwise would not. A random drive-by shooting is not coercion, merely force, because the shooter isn't trying to make anyone do anything; he just enjoys shooting people.

Moving on to "pressure" Narveson muddies the water some more, partly by premature assumptions about rights, as earlier, partly by a variant of the "freedom to be" fallacy from the second chapter. Freedom of conscience is strictly a logical nonsense, like the right to an opinion or the liberty to hold an attitude. These are things that happen *to* you, or are part of what you *are*. You don't choose to disapprove. You just disapprove. If you don't like someone you just don't. These aren't freedoms, liberties, privileges or rights; they're just facts (though facts contingent upon the prior actions of yourself and others). How one *expresses* such feelings and opinions (and how other people respond to such expressions) is another matter; these are actions like any other, and as subject to freedoms, constraints, obligations, rights and consequences as any other. Narveson tries to treat them differently, for example, by moral claims picked from thin air, such as that "we ought not to express condemnation of those who are doing nothing wrong". But why oughtn't we? He doesn't say.

In the final section Narveson tries to distinguish interference from non-assistance, but the previous *non sequiturs* make this quite incoherent. Without a baseline from which to judge, there is no logical distinction. In practice, of course, certain courses of action are so much easier than others that we may be tempted to call them "doing nothing", and this will be relevant to the question of how best to bundle property rights; but Narveson hasn't got there yet; a pragmatic solution is not the fundamental moral ground he purports to be supplying.

Chapter 5: Rights

Narveson usefully notes the essential connection between rights and duties, but his discussion is in my view compromised from the outset by his unfounded conflation of rights with morality. Philosophers have a tendency to assume that to say you have infringed a right must imply that you have done wrong - and then to tie themselves in endless knots over whether or not rights are absolute. Nozick does this too.

A great deal of confusion would be avoided if people realised that the notion of rights originated essentially as a *legal* concept, not a moral or philosophical one. In some languages (such as German) the word for rights and law is the same.

"A has the (legal) right to do X" thus means that A is free to do X without legal penalty. "A does *not* have the right to do X" means that A may be subject to penalty if he does X. "B has a duty to do Y" means that if he doesn't do Y he may be punished. "B has an obligation to refrain from Z" means that if he doesn't refrain from doing Z he may be punished.

Thus the full specification of any legal right includes what A is entitled to do, what B has a duty to avoid doing, *and* what penalty there is for breach.

We can extend this concept to include, as a parallel formation, *moral* rights, by noting that "B has a moral duty to do Y" then means that if B fails to do B he owes a penalty (presumably to whoever owns the correlative right). Similarly "B has a moral obligation to refrain from Z" then means that if B nevertheless does Z he owes (ought to pay) a penalty. "A does not have the moral right to do X" means that if A does X he may be morally liable to punishment. "A has the moral right to do X" means that he ought not be punished for doing X.

Note that once one grasps where the concept of rights is coming from, all those worries about whether rights are absolute evaporate. Any breach of a right is a "wrong" (that is, "a wrong" in this context means neither more nor less than a rights violation); but breaching a right is not necessarily wrong (that is, is not necessarily morally reprehensible).

In a libertarian or common law system, the appropriate penalty for a rights violation will generally be considered such as will "make the victim whole", that is, fully to compensate the right holder for the unsanctioned breach. In such a regime, a justified rights violation (a wrong made good) need not be subject to further moral disapprobation (though the possibility is not excluded).

Why are legal rights formulated this way, rather than in a more absolutist form? Because all *any* legal system can do is specify and enforce penalties for particular actions; the moral choice inevitably - inalienably - remains with the actor, as another of those brute facts of logic. Even when a court or legislature pronounces moral disapprobation, this merely constitutes another component of the imposed penalty.

So we say "A has a right that his land not be trespassed upon", meaning that if anyone enters A's land without A's permission he owes restitution to A. We could instead have said "A has a right that his land not be trespassed upon without restitution", which is something pretty close to an absolute claim, but which has the grave practical disadvantage that not until the end of time would we know that a rights violation had actually occurred (since in this formulation if restitution is made there is no rights violation). It is better (and more in tune with ordinary speech and legal practice) to call the time-delimited boundary crossing the rights violation, and allow that it may subsequently be "justified" through restitution.

After this long preamble, and keeping it in mind, we turn to Narveson's own exegesis. He claims, correctly enough, that "A has the right to do X" entails that "B has the duty to refrain from preventing A from doing X", but fails to note that it *also* entails that "B has the duty to *avoid* preventing A from doing X". This is crucial, because he makes much of the (misguided) claim that to allow, permit, refrain or let is not to act but to refrain from action. Yet to refrain from bowling over a pedestrian is also to avoid hitting the pedestrian by acting to steer one's car in a non-intersecting path, or staying at home, or something. Narveson's distinction is logically empty. A fuller entailed description of B's duty would be that "B has the duty to choose out of his available options only such as do not prevent A from doing X"

Narveson argues, and I think validly, that the connection between rights and duties is a matter of definition, though he adds an unnecessary and erroneous condition to his definition ("at a minimum to refrain from outrightly preventing A from doing X", which as we have seen is *not* a requirement of the standard legal formulation).

He then objects to so-called "liberty rights", with regard to a Hobbesian state of nature. I agree, though I suspect that all Hobbes meant to imply was that in a state of nature no *legal* rights yet exist - that in a jungle, jungle law obtains - not that there are no *moral* obligations there.

Narveson goes on to argue that although rights entail duties, it doesn't work the other way round. Here he loses me. I don't see why a duty cannot similarly be held to entail a right (not necessarily a *legal* right), by definition. That we (conceivably) have a *duty* to relieve starvation (that is, to relieve such starvation as there may actually be) can be reformulated as a *right* of the starving (that is, such persons as are starving) to our help, or the *right* of persons to our help should they find themselves starving.

Narveson quotes John Stuart Mill as arguing that *all* duties should be considered enforceable, on the ground that "We do not call anything wrong, unless we mean that a person ought to be punished ... for doing it; if not by law, by the opinion of his fellow-creatures [or] his own conscience", but rejects it as explaining rights in terms of duties not vice versa. I don't see why this worries him; why cannot he simply accept both rights and duties as complementary faces of the same concept, opposite sides of the same boundary?

In a similar vein he argues that we cannot simply identify the area of justice with that of rights. But why not? The standard definition of justice is that it is the rendering to every man his due - that is, what he has a right to and others have a duty to provide. Narveson seems to be trying to crowbar in a distinction between libertarians, who allegedly favour the enforcement of individuals' rights, and other "social philosophers", who hold that people may be coerced into doing things in order to equalise opportunities, etc.. Yet this again is a logically empty distinction; because we could as easily argue that individuals have a *right* to equal opportunities, etc., and that others have a *duty* to equalise them.

In this paragraph, Narveson also sneaks in a claim that libertarians "hold that everyone's sole fundamental right is the right to liberty." Not only is this false in fact - some libertarians claim other allegedly fundamental rights, others none - it is incoherent in substance. What's it supposed to mean? That everyone is entitled to total freedom? He's debunks that absurdity more than once. That everyone has an entitlement to perform at least one action X_n? Big deal. That everyone is entitled to perform those specific acts they have a right to perform? That's a tautology.

Narveson's subsequent discussion on whether rights are absolute founders, as I have explained above, on his false conflation of rights with right.

The author notes that a particular right is one held against particular persons, whereas a general right is one held against everyone (except, as he might have added, particular *excluded* persons). He observes that there are certainly particular rights, but that whether any fully general rights exist is less clear. He argues that the distinction between conventional and natural rights can be subsumed to this particular versus general distinction, but, unless the word natural is to be interpreted very oddly, this does not seem to be correct. One might have a general right to exclude everyone from the piece of land one has just purchased, but this is hardly a "natural" right to it (most people lack such a right, which one obtains via a conventional legal system, the rules for land purchase being perhaps very different in different countries).

Narveson then proceeds to what he considers a "very important distinction", between "negative and positive rights", a distinction he claims to be "in substance ... not in form", but which I claim is utterly null. *Contra* Narveson I argue that *all* rights, without exception, can be cast in both positive and negative forms. *All* rights, without exception, impose a

negative duty on those against whom the right operates to refrain from those actions that will breach the right in question. *All* rights, without exception, impose a positive duty on those against whom the right operates to perform such actions as are necessary to avert any breach of the right by those persons. There may, or may not, be a positive duty to perform actions that prevent a breach of the right by *other* persons; and there may, or may not, be a negative duty to refrain from actions that will cause others to breach the right.

It is true, as I have earlier noted, that, as a matter of convenience and economic efficiency, rights are usually bundled in such a way that refraining from violating them is relatively easy for third parties, seldom requiring much in the way of deliberate action. However, even then, deliberate avoiding action by third parties will sometimes be necessary (and sometimes third-party breaches will be unavoidable).

The idea that rights can be coherently divided into "negative rights" and "positive rights" is logically fallacious, because there is no such thing as not acting, only of choosing which actions one shall take. For all rights we can say "B has the duty to choose out of his available options such as do not lead to his breaching A's right". I would actually go further and say that "B has the duty to choose out of his available options such as do not lead to the breach of A's right", since causation is a joint phenomenon (and bearing in mind that in this context "has a duty to" should be taken as "may carry a liability in acting otherwise than to" rather than "would be wrong not to"); however, this is perhaps a more subtle argument than is appropriate at this juncture.

Narveson clearly wants to be able to derive some libertarian "right to be left alone". But it doesn't work. On a practical level the distinction is real enough, most of the time, but on a fundamental philosophical level it is logically unfounded. Narveson is again trying to put the cart before the horse. The way people naturally tend to bundle rights (when free to do so) is in ways that enhance their own freedom (as they themselves see it); with a voluntary (or coerced but compensated) exchange of rights this will tend (insofar as is practicable) to remove positive duties from third parties, because this makes life easier (freer) all round. But it's not a matter of principle; it's a pragmatic solution; and no bundling of rights eliminates those positive duties altogether (or ever could). Sometimes, for good reason, we deliberately chose to rebundle in ways that actually *increase* third party obligations.

So although there may be rights bundlings that are more "libertarian" than others, and rights bundling that are more conducive to and productive of freedom than others, what they may be is a matter of the detailed and subtle workings of the market and the political arena. It is not a simple matter of allegedly negative and positive rights (a logically fallacious distinction), nor even of the degree to which a given right appears negative or positive in practice.

Chapter 6: Liberty and Property

Much of this chapter is devoted to criticisms of positions Narveson attributes to other authors, sometimes mistakenly - and to criticisms of other criticisms of other authors! It has something of the appearance of an attempt to obscure the author's failure to provide a rigorous argument in favour of property by attacking strawmen instead.

Early on Narveson tries to make his connection between liberty and property; unfortunately he does so by sneaking in the notion of a liberty right. He does not say what he means by this new term, and I am unable to make sense of it. He did use it in the previous chapter, but only as an anti-Hobbes sneer ("the sort of 'right' Hobbes is talking about ... this so-called liberty-right"), so I presume he doesn't intend it to mean the same thing here. If he means a right *to* liberty, the attribute is literally meaningless; all rights grant *particular* liberties, that is, the freedom of the right holder to do what is specified in the right without penalty, but what does "liberty" in the abstract mean? It's one of those fine-sounding generalisations that, lacking precise definition, dissolve on close inspection.

Narveson points out that property consists in the right of a property owner to control in various ways the disposition of the subject of the property right; that the rights in question can vary greatly in extent; and that ownership can be "diluted" or "fractured" when an owner transfers some of his rights over the property to others. All rights may be construed as property rights, and "rights constitute a set of boundaries within which one's liberty to use whatever one may use is exercised." So far, so good.

However, Narveson makes a crucial error when he claims that although one makes "trivial" alterations in the relational properties of all objects in the universe whenever one moves, "these can hardly be considered even putative infringements of the property rights of those who own ... those objects". On the contrary, these real if possibly tiny infringements prove that rights violations cannot be avoided (for any plausible and useable set of rights). Thus the subject of property rights is not one of *forbidding* boundary crossings absolutely - which would be infeasible - but rather of specifying penalties for breach. In a just system, those penalties will essentially be such as to repay the right-holder.

The relevance of this is apparent in the next section where the author attempts to invoke a right of self-ownership by a less sophisticated but no less fallacious version of Hoppe's infamous argument. At a minimum, Narveson suggests, it is

necessary that, in order to have the right to do anything at all, a person must have the right to at least some part of his mind or body. But this does not follow.

In the first place, someone else could own the whole of your body, and simply lend it to you for the period in which you act. Admittedly, this permission could itself be construed as a limited property right. More fundamentally, the existence of a right or liberty does not necessarily imply capability, and the existence of a capability does not necessarily imply a right.

One can have a right to do X, even if one has no way of actually doing X without also violating someone else's rights by doing Y. For example, one could own a plot of land that one has no way of reaching without trespassing on other people's land; one could still exercise one's right to do X on that land (without penalty for doing X itself), even though in doing Y also (crossing those other people's land without permission) one may have become liable to penalty for *that* breach. In a strict sense, no one is able to exercise any of his real-world rights without at least a minimal or probabilistic breach of the rights of others.

It is true that for the active exercise of most rights at least some *power* or *control* over one's body is necessary. But it does not follow that even minimal *ownership* of one's body is required for *ownership* of other property. Narveson's thesis thus falls at the first hurdle.

By the way, contrary to many misrepresentations (including this chapter), Nozick does not assert any general right of self-ownership. He assumes something of the sort as a baseline in the hypothetical state of nature (which he readily admits is an unreal construct for expository convenience); but he certainly does not view it as in any way inalienable; indeed, he spends a whole chapter of *Anarchy, State and Utopia* showing how, starting from this baseline, everyone could end up being owned democratically by everyone else, by a wholly legitimate, rights-respecting process. Nor does Nozick countenance Locke's proviso, in debunking which he expends considerable effort.

Narveson then attempts to refute an argument from Gibbard, that a desire for liberty does not necessarily entail full property rights; but he does so by rather unreasonably rejecting Gibbard's usage of the word liberty, thereby converting the argument into a strawman.

Narveson refuses to accept that the "amount of liberty" we have can be directly connected to "the range of attractive alternatives among which we can choose" (though personally I'd say that the connection is near to an identity).

Narveson's "counter-example" is little more than a verbal trick, suggesting that one might have unattractive nonalternatives as well as the attractive alternatives; but it's the range of overall outcomes, among which one can choose, that's the relevant measure of liberty here.

Instead, Narveson prefers to consider a restriction on liberty as consisting only in what people are literally prevented from doing by other people. This is fair enough, but evidently not what Gibbard was on about. However, even on this usage, Narveson's objection is incoherent, because almost any (and probably every) property right can be stated in the form "you can't do X unless I say so", which is the very form of restriction Narveson is objecting to and claiming that the institution of property does not entail.

Chapter 7: Initial Acquisition

"Locke, as everyone knows, grounded the institution of property on self-ownership," Narveson begins. To the best of my knowledge, Locke never made any such claim, at least not directly, his apparent basis for property being rather the will of the Creator.

However that may be, Narveson continues his criticisms of what might be seen as strawmen, without being able to supply any really rigorous theory of initial acquisition himself.

Part of the problem is the author's unwillingness to appreciate the circularity of his own argument that effectively assumes the answer he wants to get. He keeps sliding illegitimately between liberty and rights, *via* the nonsense of a "general right to liberty".

If his moral premise is that persons ought to be as free as possible to do what they want without interfering with the like freedom of others, that's fair enough (though badly in need of quantitative fleshing out); but, although this might be used as the *basis* for property rights, it is not a right in itself (by Narveson's own definitions). Arguably, the best (perhaps the only practicable) way of achieving such freedom *is* through the institution of full property rights. Yet this is just what other writers' contest, saying, for example, that we can have rights to use without permitting unlimited rights to transfer. Narveson does not really get to grips with their objections.

For example, in addressing O'Neill's criticism of Nozick's parable of Wilt Chamberlain, Narveson claims that O'Neill needs to show that Chamberlain's high income constitutes an *infringement of the liberty* of someone or other. But this begs the question, since infringement is an encroachment on an existing territory or designated space; you cannot "infringe" a liberty, only a right. However, as Narveson has himself admitted, all rights inevitably *restrict* the liberty of others; whether such restrictions are legitimate depends on the previous acceptance of a pattern of rights. But just what patterns of rights may be legitimate is what is here in dispute.

Narveson needs either to explain positively why allowing full property rights maximises liberty, or else to argue along the lines that since no one has come up with a coherent non-arbitrary consistent alternative full property rights must be assumed by default. Or both.

Unfortunately, it is not clear whether Narveson appreciates that restrictions on the right of transfer of property, entitlements to compensation, agreements to redistribute income, etc., are themselves forms of property right, owned by associations of persons, and, if full property rights are legitimate, are consequently legitimate too (assuming that they have arisen by rights-respecting processes). This is not to say that they are to be preferred, of course, either morally or prudentially; they may indeed prove inferior in regard to personal freedom.

Chapter 8: Property Rights Concluded

Although most of what Narveson says in this chapter is broadly correct, his exegesis is marred by his persistent misuse of terms he has already defined differently, and terms he has failed to define at all. In particular, he repeatedly uses the word "liberty" when the word "rights" would be the correct usage, along with "infringement" instead of "restriction", as I have previously complained.

In the section on Equality, he asks whether justice requires equality, but instead of answering plainly that it does not, he "sweeps it under the carpet". The demand of justice is simply that he who owes should give to him to whom he owes, an intrinsically asymmetric operation, so the issue he should have been addressing is not whether *justice* demands equality, but whether *morality* does; for if it does, equality must trump justice and commonly override it.

Unfortunately, there is a widespread tendency to use "equality", rather like "liberty", as a vague and ill-defined rhetorical approbation. Narveson here falls into the same bad habit, characterising libertarianism as the view that everyone has "an equal right to liberty", even though he seems well aware of the meaninglessness of that phrase, using it as a way of improperly sneaking in yet another bit of nonsense in the way of allegedly universal fundamental rights.

But the really worrying thing is the way Narveson keeps blurring his original distinction between rights and liberties, and thereby glosses over the crucial fact, hitherto admitted, that all rights restrict liberties.

Part Two: Foundations: Is Libertarianism Rational?

Chapter 9: Introduction

Narveson claims that most moral philosophers today don't believe morality has any "foundations". I don't think he's right in that, unless foundationism is interpreted very strictly as the view that "warranted beliefs are possible only if they can be derived from presuppositionless first premises". This seemed to be the view, or at any rate the procedure, that Narveson was attempting to follow throughout Part One (and the reason for many of the derivational flaws I have previously pointed out). Now, though, he seems to be arguing for something much more reasonable, "a less stringent foundationism [that] asks for general considerations ... but is quite willing to settle for something less than out-and-out deductions [though it] objects to circular or clearly invalid reasoning."

He then poses four questions about morality, which may be summarised as: What does morality *mean*? Why *do* people act morally? Why *should* people act morally? What are the *principles* of morality? Oddly, he considers the third the important one, though to me it seems redundant, a mere matter of definition; morality *means* "what people *should* do or *ought* to do".

To me the most important question is one he does not pose: does morality exist? That is, is there an underlying moral imperative at all? For if not, we might have a prudential ethics, but the only answer we could rationally provide to the question "why ought I to do so-and-so" would be "it's in your own interest". That's not what most people would consider a moral answer.

Perhaps, as Narveson indicates, agreement on "the" definition of morality is not of the essence, but I am not entirely convinced. There seems to me a materialistic or reductionist bias, to which I would have to object, built into his usage. Thus he says, "We want to know whether morality ... can be supported by good reasons", which is no doubt true, but

rather glosses over the possibility that even if it can't, right and wrong may nevertheless be real - inexplicable brute facts. It might be less prejudicial to ask "Can reason help us to understand what moral imperatives (if any) there are?"

Chapter 10: *Intuitions in Moral Philosophy*

Narveson devotes this chapter to what seem to me some rather question-begging attacks on intuition, presumably with a view to enthrone reason as the basis of moral philosophy. Unfortunately, there seems no reason why *his* intuitions about intuitionism or morality should be sounder than anyone else's. There's a chicken-and-egg circle he cannot really break out of.

What he calls metaphysical intuitionism is roughly the view that knowledge of right and wrong is apprehended principally by intuition. He says that this view is virtually extinct among current philosophers, a claim I find highly implausible. Perhaps he is simply refusing to recognise as philosophers those who hold that view. He then proceeds to review what he considers its flaws.

First, he objects that in "this scientific era" appeals to mysterious entities and faculties are likely to elicit impatience. To scientists used to dealing with "mysterious entities and faculties" this may itself seem a very odd objection. More to the point, that some people may be "morally blind" in no way refutes the existence of moral insight.

Narveson then brings up the fact that moral intuitions often conflict, varying from person to person and society to society. But again, that there may be false intuitions (or what purport to be intuitions) does not imply that true moral intuitions do not exist. It may make coming to know the truth that much more difficult or unlikely, but it does not disprove the basic hypothesis of intuitionism.

"Suppose we have two absolutely identical actions in absolutely identical sets of circumstances, performed by absolutely identical moral agents: could one of those acts be right and the other wrong?" As Narveson says, there would be something very strange about that. He argues that moral properties *can't* then be logically unrelated to the ordinary attributes with which we are familiar, and so intuitionism must be wrong. But he's thrown us a curve.

By talking about "absolutely identical *moral* agents" he assumes the answer; these are not merely physically identical entities, but morally identical persons, for whom therefore right and wrong must be the same. The assumed identity has included just those moral properties under question.

We could logically conceive of at least three distinct kinds of (potentially physically identical) entity. An amoral "agent" - a machine for which behaviour is neither right nor wrong. A positive moral agent - an ordinary person who ought to do what is good. And a negative moral agent, a sort of anti-person, who ought to do what is evil (which is not quite the same as a devil, a positive moral agent who chooses evil). I do not assert that any such negative agents actually exist, or that morality actually has that sort of Zoroastrian duality, but it is a logically possible structure.

All in all, Narveson has an *intuition* that morality is fundamentally amenable to reason. It is an intuition widely shared, but for all that it's still an intuition, not a reason in itself, and thus as open to objection as any other intuition; the roots of morality might instead be fundamentally beyond rational comprehension.

Finally, Narveson contrasts the Rawlsian "reflective equilibrium" with foundationism. Perhaps it does conflict with stringent logical foundationism, but surely not with the weaker form that in the previous chapter Narveson seemed willing to accept. Why he wishes to reject reflective equilibrium is unclear, unless it is because the process not only incorporates our intuitions, but also allows those intuitions to be developed, clarified and modified over time.

Chapter 11: *Morality*

In this chapter my earlier suspicions that Narveson was attempting to smuggle in a materialist or reductionist bias are confirmed. Although he obviously realises that he cannot exclude appeals to intuition entirely he seems to be under the illusion that he can limit himself to what he calls methodological intuition; but to whatever extent he succeeds it is by apparently abandoning the whole subject of morality as commonly understood (as an underlying imperative, independent of anyone's opinion).

Narveson claims that for "social morality" a moral rule must be "general" in the sense that it applies to everyone in society, and also in the sense that it is about the sort of things that almost anyone can do. This, I suppose, he expects to be accepted by intuition, for he gives no rational argument. That absolute morality must be universal in the first sense is indeed an almost universal claim and intuition; but that social ethics need to be seems empirically false. The second sense also seems false; much of our social ethics relates to highly restricted groups, such as public officials, or doctors, lawyers and so forth, concerning things only they are in a position to do.

Narveson rejects "the habit of talking as though moral principles were simply truths to be discovered". His "argument" seems to be that no mere external truth could make you act the way you do (I'm afraid I fail to see the relevance of this rather odd and unsubstantiated claim). He asks where the normative bite of moral principles comes from and says that the answer lies in the direction of reason.

Here I part company with him fundamentally. My view is that moral principles are *and must be* truths to be discovered. That's what morality *means*: what one is *in fact* morally bound to do (whether or not one understands, appreciates or accepts the fact, whether or not other people agree, and whether or not one can get there through reason). An objective fact of existence. Anything less than that just isn't morality.

It seems to me that Narveson is playing the reductionist game, illegitimately trying to make morality a mere matter of ordinary reason - of what it is rational to do in order to obtain a certain result. But it's not. It's about whether attempting to bring about this result is *right* or *wrong*. We use reason to analyse contingent actions (and thus to make a judgement on their rightness or wrongness) *based* upon the underlying moral imperatives or values. What those imperatives may be is crucial; if there are none, if self-interest is the only basis, then there is no morality at all, only prudential ethics.

Narveson criticises Kant's Categorical Imperative for failing to come up with any "real explanation of why morality is supposed to win". But that's simply a matter of definition; the moral imperative, if there is one, is the one that trumps, the one that in fact we ought to obey. If he means that we have no explanation of why morality should actually exist, this may be true; but nor do we have any explanation of why logic should exist; or thought; or anything at all, come to that.

Chapter 12: Contractarianism

This seems to be the heart of Narveson's thesis, but I would have to say that it does not provide the moral foundation he claims, only at most an ethical or political one. Throughout he treats morality as if it were man made; his definition of a morality is as what other people would call a social ethic. The problem with such a usage is not that there is anything wrong with the application of rational analysis to such ethics, but that when he labels this as morality he leaves himself with no word for any underlying objective morality, and so we find him effectively ignoring this crucial concept (a belief in which, whether true or false, is what in fact underpins most people's ethics).

Contractarianism, then, as Narveson promotes it, contends that the principles of ethics are or should be those it is reasonable for everyone to accept (misleadingly, Narveson uses the word "morality" here). On page 134 he weasels a bit, contradicting himself several times. First he says that if we cannot get a "universal contract that literally everyone would find it reasonable to accept" then "it's put paid to our project" because our *interests* are all we have to appeal to. But then he denies that "this possibility puts paid to the theory in question", because the truth may be that "[ethics] cannot be quite as universal as that".

He argues, with what he himself admits looks like a bit of semantic trickery, that a principle "treat all F's in way x; for all others anything goes" is appropriately universal, but even if this is a valid Contractarian principle, there is no reason to suppose that it will be universally or even generally accepted. It may be accepted by those people who join Narveson's "morality club", but there seems no reason to suppose that there might not be numerous such "clubs" with radically conflicting ideas.

If all Narveson means is that a subset of people may contract into an ethic when it seems in their personal interests to do so, even if other people won't go along with it, then that's fine. However, there is then no reason why a person should not break his contract and reject the ethic whenever it suits him. There seems no basis upon which such non-universal ethics can be made binding.

Narveson holds that the Hobbesian state of nature is one without any morality (or as I would prefer to put it, without any moral constraints being recognised or effective). Although this goes beyond what Hobbes probably meant to imply, it is a useful (if unreal) philosophical construct. Unfortunately Narveson tries to use this as a justification for his amoral default principle; he claims that "whoever has not made the deal is someone ... people may do whatever they wish with ... The person who signs ... *does* have a moral right to deal with [non-signers] as he may. No one may blame him for doing so. The default action is the legitimate one in dealing with any who refuse to cooperate."

But this is double-speak. In this Hobbesian state of nature there can be no obligation upon anyone to cooperate at all, so under a contractarian theory no one can obtain a "moral right" over anyone else without the agreement of *that* person. There is no "legitimacy" in Narveson's "default action" in regard to non-signers, because there is no law; a signer and non-signer are still in the state of nature with respect to each other.

Furthermore, the notion that everyone who wishes to cooperate will agree that being nasty to non-signers is okay is surely false. Many (probably most) would want to say that the *same* (or nearly the same) ethical principles should apply to the signer's behaviour towards everyone else (signer or not). They will *not* say that non-signers should receive no

consideration at all; they may differ in *how much* consideration they should receive. So the "default action" will not get anything like universal consent; most people will not find it particularly reasonable.

This will be doubly so in the real world, in which people are not and never have been pure Hobbesians, and in which most people believe we have certain moral obligations towards other people *whether or not* we have any prior agreements with them.

In this chapter Narveson also provides what seems to me a generally sound criticism of the standard interpretations of the Prisoner's Dilemma. However, before analysing this in detail it may be worth noting that Narveson's claim that (in the language of games theory) a state of cooperation dominates the sovereign state (which itself dominates the Hobbesian state of nature) is fallacious. The state of cooperation can only exist where no one defects - where the powerful never seek to bully the weak. But in that highly improbable state, a Sovereign will also cost nothing, because nothing needs enforcing; and having a Sovereign risks nothing, because, by hypothesis, he will never abuse his power.

The Prisoner's Dilemma goes something like this: Two prisoners are separately approached by the prosecutor, who tells them that if they both confess they will each get three years in gaol, whereas if only one confesses that one will get one year but the other five years; if neither confesses they will both get two years. Supposedly, a rational prisoner will confess, arguing that if the other confesses, he is better off confessing (three years versus five), and if the other does not confess, he is still better off confessing (one year versus two). So both "rationally" confess, and get three years, even though they know this is a worse outcome than the two years they'd get if they cooperated and stood firm. As Narveson points out, this is a very odd sort of rationality.

For several reasons the Prisoner's Dilemma seems to me a bit of a conjuring trick. In the first place, note that it gains its rhetorical strength by being told as a story about persons who are presumably criminals; the sort we already know are prone to double-cross each other.

If we transmogrified it into the Saint's Choice or the Martyr's Trial there'd be no doubts, no dilemma. Two sick saints are separately approached by the doctor, who tells them that each needs one of the other's organs; if only one donates, that one will die, but the other will recover within a year; if both donate they will both recover in two years; if neither donates, both will remain invalids. No problem. Each saint automatically agrees to donate; so both recover.

Or consider two martyrs asked by their persecutor, not to confess to a crime, but to repudiate their faith; both will hold fast. It may be a trial of faith, but it is not a dilemma.

The point here is that the "rational" behaviour in (what appears to be) a Prisoner's Dilemma depends critically upon *the character of the players*, especially upon whether they have a disposition to cooperate or defect. In the absence of any information on the other person's character, a player may assume that the other has a similar disposition to his own, or, alternatively, that the disposition of the other is unpredictable; and the assumption he makes, and the assumption he expects the other to make, will themselves turn on their respective dispositions. It is questionable whether, in such circumstances, any fully coherent definition of rational behaviour can be given.

A further basic flaw is this: The Prisoner's Dilemma purports to involve just two players. But it doesn't. There's the prosecutor too. Why should the prisoners believe him? Isn't *his* rational action to try to induce a confession by such plausible offers, but then to renege and bang them *both* up for the maximum term? And shouldn't the rational prisoner realise that, and so refuse to confess? Moreover, the fact that the prosecutor is even making such an underhanded offer is pretty good evidence that he's the slimy sort of character who'd double-cross his own grandmother, which is more than each prisoner knows of the other.

One might argue that the prosecutor is incidental, not germane to the philosophical dilemma, and could easily be written out of the story. But could he? It is very difficult to devise a genuinely watertight prisoner's dilemma scenario; one in which there are just two players; who somehow know enough about the circumstances, their options, and the payoff matrix, but not about the other's disposition; who cannot communicate with each other; and in which the game is a one-off, with no further interaction possible between the players. I am far from convinced that the prisoner's dilemma is even a coherent possibility.

Narveson, following Gauthier, gives a good argument, along similar lines to the above, against the easy acceptance of the defector's notion of rationality. Unfortunately, he takes it a little too far, implying that in the prisoner's dilemma it is rational to take on the disposition of a cooperator, even when one knows that other people are likely to be defectors; and this won't do either.

In many scenarios it is indeed rational to behave in such a way that one will be perceived as a "constrained maximiser", that is, as having the disposition of a cooperator (or perhaps a tit-for-tat retaliator); unfortunately, on this basis it can also be rational to *pretend* to have such a disposition, inducing others to behave *as if* one had that disposition, but then, when

conditions are ripe, "make a killing" by defecting. For any individual, having a "nice" disposition may be less profitable than having the appearance of niceness, while retaining the freedom to act nastily; there may well be a collective evolutionary advantage to the race in being genuinely cooperative, but we cannot simply turn that into a rational or optimal game theoretic strategy for the individual; the interests of the race and the individual are correlated, but not identical.

Chapter 13: *The Logic of Contractarianism*

Narveson argues that contractarianism should be accepted because no other view can provide reasons for everyone to accept it. However, he has not yet demonstrated that "general rules *universally* advantageous to moral agents" even exist. Furthermore, even if they do, there may be rules or modes of behaviour still *more* advantageous to *some* moral agents; if personal interests are all that matter there is no reason for *those* agents to abide by the ethics of the rest.

In any event, Narveson is attempting to force a reductionist interpretation of reason and denying the legitimacy or possible correctness of intuitions other than his own. This is apparent in the second section (pp.148-149), where he refuses to come to terms with Locke and Aquinas's insistence that the "natural law" of morality is fundamental, independent of human will, yet capable of apprehension by human reason; their morality, unlike Narveson's, is *not* merely a prudential ethics, and, *contra* Narveson, has not left them without adherents among contemporary philosophers (there are probably more Thomists today than members of any other philosophical school).

In effect, Narveson is making (his version of) rationality the fundamental moral principle; but what's so grand about self-interest? Why should not true morality trump such "rationality"?

His discussion of utilitarianism seems flawed in several respects. First, he is in error in supposing that a maximisable utility need be cardinal - an ordinal utility might suffice, though interpersonal comparisons are still required. Second, since no social system can in practice entirely escape the making of such interpersonal comparisons (even if its ideal is Pareto compliance), the philosophical objection against utilitarianism (or econometrics) is misplaced.

Narveson notes, correctly enough, that persons may gain utility from moral codes other than utilitarianism; but this is in no way incompatible with a theory of utilitarianism as the fundamental morality. It may seem ironic to "rationalists" or contractarians, but utilitarianism does *not* require everyone to *accept* utilitarianism; theoretically, the utility maximum could obtain when *no one at all* believes in it!

Narveson also notes that, what with second-order utilities and the like, the calculus can easily get very complicated. Very true, and we could not expect to make practical decisions by detailed calculations of total utility, only by means of less fundamental rules; but so what? The very same could be said of quantum mechanics; it is the accepted basis of all chemistry and most physics, yet in practice scientists cannot use it to derive a full solution for anything more complicated than a simple hydrogen molecule.

Narveson points out that the acceptance of utilitarianism rests upon a *moral* intuition. What he fails to appreciate is that *rejection* of utilitarianism rests upon a moral intuition *no less*. One says, it is true; the other says, it is false. Similarly for any other internally consistent moral theory.

Chapter 14: *Contractarianism to Libertarianism?*

Narveson now wishes to retrieve what he categorises as the principles of libertarianism from a contractarian rather than intuitionist basis (though of course he has already smuggled in intuitions of his own). He argues that we should start from the "ultimate baseline", a Hobbesian state of nature in which there are absolutely no recognised rules whatever. Quite why he does so is not clear, since he also says, "In the absence of special reasons to think otherwise ... we should ... reason from where we are at the moment", which isn't, and never has been, a Hobbesian state of nature.

Despite his earlier discursion on dispositions, in regard to the Prisoner's Dilemma, he does not seem to appreciate that there exists a wide range of possible "states of nature", from Hobbesian amorality (the war of all against all) through to Lockean anarchy (in which everyone respects each others' rights not by the constraint of social rules but through the moral law in the heart of each person).

Nor does he seem to appreciate that people can exit from the state of nature (improve their position through the creation of a society), in rational accordance with their moral and non-moral values, by *combinations* of cooperation, contract and coercion. Much as Hobbes addressed only one alternative to the war of all against all - that of an absolute sovereign - so Narveson is considering only one highly implausible exit route, and claiming for that alone a rational legitimacy.

Yet surely anyone who seriously promotes contractarianism as a practical solution is being far from rational, because, given the values, beliefs and intuitions that people actually have, anything like universal agreement is out of the

question. It is hard enough even getting a bare majority. If contractarianism will not work, even or especially from the Hobbesian state of nature, a rational self-interested or other-regarding ethics must involve substantial coercion and the forcible *imposition* of social rules. The empirical evidence is that this is more or less how societies superior to the state of nature have in fact come about. How then can contractarianism be considered more "rational" than those other workmanlike solutions?

Starting from the *status quo*, we can rationally argue for changes in the direction of less reliance upon coercion and more reliance on contract; but this is quite different from arguing that universal agreement should or could be made the foundation of all our ethics.

Narveson quotes much of what he calls a "brilliant and trenchant critique" by Arthur Ripstein, which argues that the Hobbesian method is not politically or morally presuppositionless. In short, if human values are fundamentally subjective, and all pursuit of such values is rational, then *whatever* socio-political regime eventuates is rationally justified; there is then no basis for elevating any hypothetical form of society or system of ethics above another. Whatever is, is best!

Though admitting the power of this argument, Narveson contends that it does not dislodge the contractarian claim. His rebuttal, though, seems very weak. He evidently fails to see that not every society need be a *polis*, that political solutions all but inevitably involve substantial coercion, that an accommodation or compromise does not necessarily entail moral or even pragmatic agreement, that coalitions can form and reform within society as the balance of power shifts, that even outright violence can occasionally be part of the way people rationally pursue their interests.

Narveson summarises libertarianism as saying that each person has a determinate set of fundamental resources which he has a right to use in any way that does not violate the similar rights of other persons. This I think is at best misleading; why should the resources a person has a right to use be either "fundamental" or "a determinate set"? This smacks of an illegitimate attempt to smuggle in the so-called "natural rights" that elsewhere he pooh-poohs, though it is true that the specific examples he gives (and considers adequate for the time being) are ones that almost all libertarians would go along with.

Narveson argues that the contractarian approach fundamentally hopes to "generate moral principles for societies out of the non-moral values of individuals" - to which I would respond that what can be generated that way are not *moral* principles at all, only ethical ones, and that in general individuals' values are *not* "non-moral", and it is foolish to pretend otherwise. The author appears to believe that such of an individual's values as *are* moral are to be "subject to critical review", rather than simply accepted. Yet why is it that "moral" values are singled out for such arbitrary treatment? Why not aesthetic values, or the desire for self-preservation, or anything else? Is it perhaps because such prior moral values defeat the enterprise of contractarianism before it can properly get started?

Narveson proceeds to criticise Nozick's discussion (*Anarchy, State and Utopia*, pp 48-50) of *M* or "meaningfulness". Yet his description of what Nozick says is so absurdly false that it is hard to accept that it is honestly meant; he says "Nozick apparently held that any individual endowed with what he called "M-ness" ... would just obviously accord libertarian rights to all other M-beings". Yet far from making any such unsubstantiated claims, what Nozick actually does (without ever using the term "M-ness") is to ask a series of questions, which he does not pretend to answer, like: "Why *not* interfere with someone else's shaping of their own life?"; "Why are there constraints on how we may treat beings shaping their lives? And why *not* destroy meaningful lives?". He notes that the prudential argument, that it is in your interest to allow another to pursue his conception of his life, seems insufficient, and says that he "hope[s] to grapple with these and related issues on another occasion."

In the following argument, I find it hard to make sense of Haworth's "stark" distinction between liberty and autonomy; whether this is on account of Narveson's selection of extracts I don't know. Perhaps by autonomy Haworth means that one's own choices determine one's own life, and nobody else's choices do, whereas liberty can involve choices that impinge on other people. Yet only by becoming isolated "atomistic" individuals could people then become autonomous; can anyone seriously be promoting this as a fundamental moral value? Alternatively, as Haworth's talk of a "right to education" suggests, his autonomy may be the capacity for making up one's own mind (though it is doubtful that state schooling nurtures any such thing) and the *de facto* and *de jure* capacity for carrying out one's chosen plans (though, as Narveson points out, forcing people to contribute to public education seems a clear violation of such autonomy).

On page 171 Narveson rightly comments, in criticism of the moral theory of Alan Gewirth, that "what are required for one's purpose-fulfilling actions are not rights, but only enough noninterference by others to enable one to get on with [them]". If only he had earlier applied that lemma to his own fallacious argument of necessary self-ownership (in chapter 6)!

Narveson then proceeds to reject another "false start", the argument from "survival"; clearly people can and do survive, and with style, in markedly non-libertarian regimes.

Narveson argues that contractarianism must be envisaged as a *voluntary* undertaking, free of coercion, and libertarianism as maximising individual liberty through self-ownership (I would contend that the former is to all intents and purposes unachievable, and the latter both unnecessary and incoherent, since it denies the liberty of self-alienation).

Following Gauthier, Narveson suggests that a principle under which no one is permitted to "worsen the situation of others", relative to the situation in which that person did not exist, could, in a Hobbesian state of nature, find universal acceptance. Narveson obviously has some doubts about this, wondering whether "the social contract along Lockean-Gauthieran lines" does leave literally everyone at least as well off, but his discussion of this in terms of open conflict and war seems wide of the mark. In any case, such a principle, if it were even formulable as a set of practical rules, would not be libertarian; if Joe and I fall in love with the same girl, or want to homestead the same patch of land, then each is worse off than if the other did not exist, yet neither of us is violating the other's rights. A Gauthieran principle must somehow forbid our falling in love with the same girl, etcetera, or any actions that might lead to such a result - in effect, I must be given a right to forbid Joe's existence, even before we have come into contact or begun to interact!

The crucial error in Narveson's "crucial question" can be seen on page 181, where he says, "It must be borne in mind that the Hobbes-Locke offer is as follows: sign up for a social contract allowing each to be whatever [he] might wish to become, provided only that [he] respect the right of all others to do likewise, *or* be fair game in a pitched battle with what will certainly turn out to be the vast majority of your fellows." To be blunt, this is drivel - a false dichotomy. Narveson is offering only the most extreme positions, ignoring the vast range of possibilities that lies between them, a terrain occupied and roamed over by every human society there has ever been, a terrain coterminous with the whole of politics and government. By choosing to cooperate with some in coercing others, most of us gain the ample benefits of society; we do not however come up with a unique set of ethics thereby.

Narveson appears to assume that "the" alternative to a Hobbesian state of nature is a libertarian principle of equal respect for each others' rights. But this simply does not follow. In the state of nature, some persons are stronger than others; this gives them enhanced bargaining power in setting the terms of any "social contract", which will then be based, not on some supposedly rational principle, but upon the respective threat positions of the parties. It is rational for the weak to accept something less than full libertarian rights, since they are still going to be better off than under the state of nature. So even if there were a genuinely universal or general contract (which of course there won't be) there is no reason to suppose that it would be libertarian in form, and strong reason to suppose that it would not; there are many possible Pareto-compliant solutions.

It is conceivable that in (almost) any population there will exist a potentially dominant coalition for which it would be rational (in the best interests of all members of that coalition) forcibly to impose a proprietarian regime upon the rest (for whom it might be contrary to their wishes or interests); the subsequent collective enforcement of those property rights would then make it rational for (almost) everybody to go along with that regime (whether members of the original coalition or not). However, to call such a regime a social contract, or its impositions a contractarian morality, would appear misleading in the extreme.

Now we could reasonably argue that a regime of full property rights is in fact the solution that will generate the most prosperity overall; we could even argue that almost everyone would in the long run profit from accepting such a regime, in preference to any plausible alternative their threat positions would enable them to hold out for. This would be a strong argument for the adoption of such an ethical system (in effect, for this sort of libertarianism); given some sort of generally utilitarian or Paretian moral principles it would also be a strong argument for its moral legitimacy. However, it would not be an argument for contractarianism, unless we could also show this solution to be universally convincing - which factually we know it is not. Furthermore, the legitimacy of the solution, as one most beneficial to almost everyone, does *not* depend upon its universal acceptance; it will be the best foundation for the socio-political regime *whether or not* everyone agrees, even if it is to a large extent imposed coercively. It is not voluntary agreement *per se* that makes the ethics beneficial, but the empirical consequences of the implementation of those ethics within society. Libertarianism is not validated *by* contractarianism; at best, the validity of libertarianism provides a justification *for* adherence to social contracts, and may make some approximation to rational social contracts more feasible.

Part Three: Libertarianism and Reality

Chapter 15: Society and the Market

What strikes me about this chapter is the way Narveson keeps talking about "the" market, as if every market were the same. This unfortunately blurs the crucial distinctions between "ideal" markets, free markets and regulated markets, and it is not always clear what sort of market Narveson is considering. He notes that in a "full market society" the market itself - and by that I assume he means the laws governing the operation of the market - may be on the market, contrasting that with "the" minimal statist who allegedly "would support that activity [protection from force and fraud] out of taxation".

He claims, with what *seems* like approbation, that "most libertarians would agree that the rights they insist on are natural rights", but if so, this contradicts his repeated view that "the rights that frame the market must be founded on a prior agreement". Neither view is correct. These market rights are legal rights set up as contingent possessions or conventions among groups of persons - *but not necessarily by agreement*, still less by unanimous or universal agreement. That is to say, markets are in practice created and maintained with substantial coercion, even (or perhaps especially) those best approximating a free market. It simply isn't true that a society has to "agree" - and even where a prior agreement is reached the resulting market is unlikely to be a free market (its terms will depend on the threat positions of the participants).

Narveson goes on to discuss ideas and criticisms of Gauthier and Braybrooke, the relevance of which rather escapes me. He seems to wish to deny the obvious fact that the market - or the social structure that maintains the market - is a public good, or that its creation has benefits that could be the subject of distributive agreements beyond those of specific market contracts. He goes so far as to doubt that alternative "socialist arrangements" are even available. But such claims seem blatantly false; regulated markets and welfare states exist, so they must be possible! I cannot avoid the suspicion that Narveson is using sophistry to smuggle in his own anarchistic assumptions. It may be that there are fewer public goods than is often believed, but that is very different from pretending that there are none at all, or that the Lockean Proviso (if accepted) would automatically prohibit distributive agreements or publicly authorised coercion.

Narveson points out that "economic" values are far broader than opponents of the market like to pretend, and notes that information about goods (and information about information ...) is an important economic good, which he argues, reasonably enough, ought to be on the market itself. He goes on to discuss monopoly; at the extreme, he argues, "every time a sale is made, somebody has a monopoly on something: no competitor is there at that time with that item at that price". Perfect competition does not exist in the real world; however, a free market is defined not by perfect competition but by *free* competition, in which there are no artificial barriers to market entry (other than market conditions and the current patterns of ownership). All of which is fine, though just what constitutes an "artificial" barrier is not always obvious (suppose the owners of a shopping mall permit only one franchised restaurant ... a town *ditto* ... a country *ditto* ...).

Finally, Narveson addresses "factor rent", when monopolies can over-price or fortunate persons get over-paid. The general issue seems to be the strategic question of who should get the social surplus, but beyond pointing out the grave difficulties in identifying such pure rent, Narveson does not seem adequately to refute the contention that it might usefully or legitimately be taxed away for social purposes. Why shouldn't a society agree to do so? Bear in mind that, assuming correct identification, all transactions would remain Pareto compliant; the economy would still Pareto optimise. On the face of it, identifying and collecting such rent generally would be impracticable; but there might be exceptions; so why should taxing them be ruled out?

This may be a convenient place to note that, even in a free market, not all rights-respecting transactions are necessarily Pareto compliant; it is possible for property rights to be bundled in such a way that a majority of shareholders, for example, can override the wishes of the rest; it is possible for people voluntarily to choose such bundlings, and it is rational for them to do so when the bundling itself is a Pareto improvement. However, prudential considerations do suggest that, wherever practicable, such problematic bundlings should be avoided or the degree of possible noncompliance minimised (for example, by requiring all shareholders to be treated on the same footing, thereby preventing the majority from simply voting away the minority's shares).

In all, as an apology for a free market, this chapter seems weak. I cannot see its persuading anyone who was not already a free marketeer. It does not supply either strong moral reasons or sufficient prudential reasons to support a fully free market as distinct from more interventionist or regulated markets.

Chapter 16: *The State*

In what should be an important chapter I find Narveson to be less than reliable in his representation of the facts and of other peoples' views. He even distorts his *own* arguments to suit his ideological agenda. Regrettably, he seems to have stopped even trying to be an objective philosopher and to be engaged merely in state-bashing. Unfortunately, it is hard to criticise his pervasive errors without getting mired in repetitive complaints or tedious side-issues.

Narveson, apparently with a view to denying states the legitimacy of their claim to being civil associations, contends that the public is not an association, because it has no unifying purpose. However, a public can and often does have such a purpose, sometimes even one strong enough to make it a community; and that general public we call society has indeed the common purpose of the maintenance of civil order, as providing the setting within which its diverse private purposes can then be effectively pursued.

Narveson claims that a state is a public with a government, and that a government is a smallish subset of the public that has acquired the power to rule. Neither is quite true. A state is essentially a government over a territorial region;

admittedly it wouldn't be much of a state without a public, but in theory it could have an entirely new public every day. An example of such a state could be a sovereign trading post, or a refuelling stop, or a space station, where most of the population at any given time is transient. Similarly, government is whatever individual, association, institution or mechanism does the governing; and that could comprise all of the public, or none.

Narveson claims that membership of the public in a state is not voluntary, but fails to give any philosophical justification. This is an important point, because most people most of the time in most states are at liberty to leave the country if they don't like it. They *do* have a choice. This, as Narveson admits, is different only in degree from membership of other associations, none of which guarantee any acceptable alternative if you decide to leave them. It is true that one is seldom permitted to continue to reside within the sovereign territory of a state from which one has resigned (or if one does one will still be subject to its rules), but much the same could be said of the property of any other association. If Narveson wishes to argue that nation-states are necessarily behaving improperly in this regard, he will have to do a lot better than this.

It is of course possible to argue that states are not the legitimate owners of the territories they rule over, or of the property rights they command, because they have achieved their authority over them in part through aggression - or by coercion rather than purely voluntary means. Leaving aside the possible circularity of this argument, it must be observed that the same is true of every association whatsoever; *all* property has injustice in its past; no one has completely clear title to anything, and every right is in some degree historically cloudy. If the legitimacy of rights bundlings that include states is to be rejected on these grounds, so, logically, must all property rights whatsoever (even those directly grounded in self-ownership, since one's very existence, as the particular individual one is, is predicated upon the whole history of the world, warts and all, prior to one's birth). Yet this would be to misconstrue the underlying function or purpose of property rights, which is to *escape* from the arbitrary violence of the past and replace might by right *from here on*; that today's rights bundlings may have arisen wrongfully is therefore *not* an adequate reason to reject them, whereas to reject some but not others is simply to perpetuate the oppressive role of arbitrary force - exactly what the institution of property was meant to avoid.

It is often erroneously asserted, especially by anarchists looking for strawmen to trash, that states claim a monopoly of force. Narveson repeats this falsehood, in the slightly less extreme form "private uses of force must be authorised by [the state]". In reality, no actual state of which I have knowledge has ever attempted to monopolise the use or even the authorisation of force. What a state normally does is to reserve the *right to judge* the lawfulness of a use of force within its territory, or to pass laws concerning its lawfulness; it will not judge *every* use of force; it may *refuse* to judge some uses; and it will usually only judge when it receives a complaint, whether from the public or from its own officers. It does *not*, in general, claim that it can legitimately authorise *whatsoever* use of force it pleases; and it does *not*, in general, claim any absolute authority, or that whatever it does is automatically right. A democratic state - or for that matter a contractarian state - might make such immoral claims, but in practice very few states take the principle of democracy that far; *contra* Narveson, states do not usually claim to be "omniscient authorit[ies]", and the idea that they might be is *not* the traditional "theory of government" but rather a feature of modern totalitarian ideologies (as is the despicable notion, which Narveson's contractarianism also explicitly embraces, pp146-7, p210, etc., that anyone who doesn't agree with the favoured ideology is a kind of non-person not entitled to justice or moral consideration).

Narveson's "brief note" on democracy conflates two very different things; representative government, and majoritarian rule. A democracy without elected legislators is entirely conceivable. Whether it would be prudent is another matter. Furthermore, a democracy could very well decide, by majority vote, that certain rights and privileges will not be subject to piecemeal majority vote (for so long as this general provision is not overturned); this would be no exception to majority rule, rather a specific implementation of it.

Narveson next considers authority as a means of coordination, but is sceptical that such considerations take us far in the direction of the state. He does not tell us what basis for such doubts he may have; and it seems to me that the crucial coordination problem of the law - whose procedures, rules and judgements will be enforced - is one which is likely to prove effectively insoluble other than through the institution of sovereign states. Narveson's "central point about coordination", that "the outcome in which everyone acts in one way or everyone acts in another way is preferred by all to any outcome in which people act independently", is also not quite correct. Coordination may require only that *most* people, or perhaps just a sufficient number of people, behave in the coordinated way; the optimum need not be unanimity, which extreme outcome might on occasion be inferior even to a complete lack of coordination. This distinction is important in considering the problems of coordination both with and without states.

Narveson goes on to claim that "People who protect you without and contrary to your permission are invading your rights ...". But this is true only if they have no right to so protect you, or if they do so in ways that happen to breach your rights. On their own land, for example, they will normally have a right to protect you, or give permission to other people to protect you, *whether you give permission or not*. Similarly, they don't need your permission to protect your property by preventing trespassers or criminals from crossing their own property, or by arresting them. Indeed, it all boils down to

a tautology; they are breaching your rights if and only if they are breaching your rights; and whether that is so depends upon the details of the current rights bundling.

Narveson then addresses Nozick's argument for the minimal state (or rather, his own misrepresentation of that argument). He notes that starting from a Lockean state of nature, people may form protective agencies and that plausible market forces then operate to create a natural monopoly, a *de facto* state, because the biggest agencies can provide the best protection. The argument is fair enough, though it's not quite the one Nozick actually uses; however, although a dominant protective agency is by definition stronger than all the others put together, it need not be a monopoly, or even a near monopoly - a market share of roughly 50% will suffice.

Contra Narveson, the dominant protective agency is a *de facto* state (or statelike entity) not because it has a "monopoly of force", but because it has the power to *override* any of the other agencies with whose rules or judgements it disagrees, within the territory in which it is dominant. At this stage it has become an ultraminimal state. It protects only its own clients, but is able and willing to protect its own clients against the clients of other agencies, and against those agencies themselves.

The next stage, which Nozick (mistakenly in my view) considers morally obligatory, is to convert the ultraminimal state into a minimal state, in which the dominant protection agency extends its protection to everyone within the territory (though, *contra* Narveson again, in doing so it need not impose costs upon anyone other than convicted wrongdoers).

Nozick does not add that "it claims to justify its monopoly by reference to principles alleged to be authorised by its citizenry" because it isn't so; its justification comes from the underlying (broadly Lockean) morality, not some contractarian ethics. *Contra* Narveson (I'm getting fed up with saying that) every state in history (so far as I'm aware) has held that its authority comes from "principles that are simply true". Even democrats don't say that the *principles* of democracy are valid *because* they are authorised by the people, but rather that because the principles of democracy are valid the general will of the people must be followed.

Given a set of rights, that a Nozickean state may arise by legitimate (voluntary or compensated) transfers of those rights (including agreements among the right-holders) is crucial to the philosophical argument; but neither the rights nor the morality grow out of any social contract; social contracts grow out of the rights previously held and rightfully rebundled.

Narveson wants to pretend that Nozick's minimal state isn't a state, by falsely claiming that any subset of citizens could get together and declare independence (one wonders what strange version of Nozick's book Narveson has read). But what makes it a *minimal* rather than *ultraminimal* state is simply that no one may withdraw from either its protection or jurisdiction (except by leaving its territory), in which it is exactly like most contemporary states. Furthermore, many historical states have permitted opt-outs both from their protection and to a limited extent even from their jurisdiction (for example, England and "benefit of clergy"); so an ultraminimal state is a proper state too.

Narveson also questions why, if Nozick's procedure can legitimately generate state protection, it cannot similarly generate state provision of other functions; but the answer is that, in principle, it can. If people initially have a right to obtain good G from competing suppliers, but find that when once a single supplier captures a certain fraction of the market others are *prevented* from competing, or customers *prevented* from patronising those other suppliers, then capturing that market share violates those prior rights; and the new monopoly supplier has then a moral obligation directly or indirectly to supply the whole market and to compensate for the imposed loss of choice. Nozick claims that in fact such a situation exists in regard to protection, but not in regard to other goods; so according to this argument the minimal state is justified, but more interventionist states are usually not. However, if Narveson merely wishes to argue that Nozick is in error in thinking that protection *is* such a good, then I'd agree with him.

Narveson now proceeds to the question of law, objecting to the standard view that it should apply to everyone within a given geographical area, on the spurious grounds that there is no coherent principle for drawing the boundaries of nation states. This is as silly as objecting to private property in land on the grounds that there is no coherent principle for drawing the boundary between my property and yours. Territories don't arise out of philosophical principle so much as historical contingency; the principle for drawing boundaries is to draw them where they actually are, or where the holders of the rights on either side decide to put them. In practice, the boundaries of nation states are usually quite efficiently placed, along distinctive geographical features like major rivers or watersheds, separating ethnically and linguistically distinct populations. The snide fashion of sneering at "lines on a map" is one that, in the interests of objectivity, students of political philosophy would do well to avoid.

Nevertheless, Narveson is right to question whether such geographical continuity is actually *necessary*. To some extent at least, voluntary associations with diverse rules can and do coexist in the same territories; however, these rules are not laws in the usual sense: they can't decide disputes between members and non-members. The "anarchist reply" he gives, that "as things are now, different areas have different systems of law, so that when an individual from area Q goes to visit in area R [disputes] are settled by having representatives meet and reach agreement", is false; if you are in area R you are

almost always subject to R's laws, wherever you happen to come from. It is only in matters that intrinsically affect both jurisdictions (such as pollution of the boundary river) that an accommodation may need to be reached between them - and it is notoriously difficult to reach an accommodation agreeable to both.

Narveson says that interjurisdictional problems leave the parties with two options - to consent to binding arbitration or to "settle" them by force. This is another false dichotomy. Another option is to leave them unsettled, gradually piling up or gradually losing their import. Most people - and most states - have unsettled scores of this sort. So long as they are not too numerous, we can live with them. However, this works only when interjurisdictional disputes are the exception rather than the rule; and this is just what the geographical separation or territorialisation of jurisdictions ensures.

Narveson then attempts to show that *restitution* is the best way of dealing with crime. I agree, but strongly object to his sneering attacks on other theories of punishment and their practitioners, as well as his continued and infuriating misuse of "she" instead of "he"; I find it hard to force myself to keep reading. Not only does he evidently share the ideologist's usual overestimation of the powers of education (even to the point of wanting to punish parents for the offences of their children) he foolishly imagines that pseudo-rational materialists like himself would be more effective than the clergy who have traditionally performed this role (even though the latter can reinforce their message with *both* absolute morality *and* prudential self-interest).

The various theories of punishment are not as disparate as Narveson wishes to imply; for the most part they differ more in emphasis than in fundamentals. In particular, the *lex talionis* is at its core a law of proportional restitutive justice, of which retribution and compensation are the two faces, and deterrence the outcome. Admittedly, one may believe that retribution would remain an important part of justice, as a fundamental moral imperative, even if it were divorced from restitution and deterrence; Narveson is clearly unable to comprehend such views because he doesn't recognise any absolute morality.

The obvious answer - which the author somehow misses - to the question "how much deterrence?" is "such that the marginal cost of additional punishment equals the marginal reduction in loss due to the deterred activity". In other words, the economically efficient amount. It is not necessary, by the way, for those to be deterred to be fully rational persons; all we need is that they display a mostly monotonic aversion curve or utility function (as even lunatics almost invariably do). Nor is it necessary that *all* or even *most* offenders be punished; increasing the probability of punishment increases the costs (including the cost of false positives) as well as its effectiveness; the optimum is a tradeoff between severity and certainty. In some cases, such as minor traffic violations, the optimal conviction rate per offence may be extremely low.

Narveson does observe that a restitutive system (with full compensation) would also constitute a deterrence system (it is also a retributive system), though he mistakenly assumes that this would tend to eliminate crime entirely. He does not seem to appreciate that crimes can be efficient; indeed, there are numerous efficient torts we commit daily and without which civilisation would be impossible (this goes back to the fact I mentioned in the review of chapter 6 - that probabilistic breaches of property rights are inevitable).

Chapter 17: Redistribution

"The most typical libertarian argument is that the State forces you to do things simply for others." If so, it shouldn't be. A legitimate libertarian complaint might be that particular states are forcing you more than is necessary to secure the benefits of civil society, or in ways that are on balance harmful. But Narveson's complaint is not so much libertarian as anarchist; he persistently and erroneously conflates the two, by tricks like the misleading use of the definite article and capitalisation ("the State", instead of "a state", or "states") which obscures the great diversity of states actual and conceivable.

Throughout this chapter Narveson seems to be under the delusion that arguments for or against redistribution are arguments for or against the existence of "the State". They're not. Only for or against redistributive states, or for or against states' engaging in redistribution.

Narveson contends that a "defense of the State as an institution will have to show that there are benefits *for all* ... by having a nonvoluntary coercive agency to assure them". To see how fallacious this is, consider the parallel claim that a "defense of anarchism as an institution will have to show that there are benefits *for all* in having no nonvoluntary coercive agency". Neither is valid. An inability to provide such a "defense" of anarchism or "the State" would merely tend to indicate the infeasibility of universal agreement or perfect Pareto compliance; it wouldn't tell us very much about which *imperfect* systems we should try to implement, or how to reform the systems we actually have. Similarly, even if we *can* show that there are at least *some* distinct features that everyone would benefit from - as I think we probably can for *both* anarchic and state regimes - that still doesn't tell us which is best.

Narveson next considers the problem of "public goods" and "free riders" (not actually an instance of the Prisoner's Dilemma, but in many respects similar). He correctly identifies the major problem - that if others contribute you can get the benefits without paying the price whereas if others don't contribute you won't get the benefits without paying their share too - but goes badly astray in trying to escape from the corollary that the solution may be coercive "collective-governmental action".

First we should note that, even though positive externalities need not necessarily be controlled by law - because they are self-limiting - they still lead to underproduction of the goods in question. Coercive internalisation may still be beneficial and, with full compensation, Pareto compliant.

Second, to the extent that any organisation engages in coercion - such as the threat of expulsion - to penalise free riders, it is engaged in *governing*. The state is not the only source of governmental coercion in society. However, there may well be public goods for which only the state can effectively internalise the costs and benefits (national defence is often considered a prime example). Furthermore, a state - or for that matter a stateless legal system - may also help solve the holdout problem by permitting *private* persons and organisations to force efficient transfers so long as they pay full compensation.

Narveson's Chamber Music Society example misses the point - that the availability of the strategy of free-riding causes public goods to be *under-supplied*. No one claims that no such goods will ever be supplied at all. But there will be *fewer* Chamber Music Societies than there ought to be (unless they can find effective ways of exacting perfectly discriminatory contributions from all their beneficiaries - which commonly they fail to achieve by a wide margin). Coercive procedures help coordinate the production and distribution of collective goods (though not without drawbacks of their own).

Narveson's objection to coercion seems to be that if everyone voluntarily agreed to cooperate in doing the economically efficient thing - to follow the strategy with the highest cooperative payoff - then this would be (morally? economically?) superior to forcing people to do so. I dare say. But people aren't like that. We have to deal with people as they actually are. And if people aren't like that, it is hardly rational to behave as if they were. The core of morality and politics isn't about how nice it would be if we all cooperated; it's about what to do when we *don't* agree. We can't simply wish away the disagreements.

That's not to say that Narveson's "Silver Rule" ("Go out of your way a bit to be helpful and don't stop at just once or twice but don't make a fetish of it either") is either irrational or inappropriate. If he'd bothered to read the New Testament without prejudice he'd have realised that's pretty much what it says there; forgiving seventy times seven means you don't bear grudges against people who have wronged you but *repented* and made amends. Yet the mutual benefits of such civility arise only in a stable society under rule of law, in which adequate mechanisms to prevent or discourage free-riding are in operation; these mechanisms include religious faith, or belief in absolute morality, and reputation. In the absence of such mechanisms, or where they are weak, it doesn't work. Even at its best, as Narveson admits, it's rather vague; we may often do better by defining our mutual responsibilities more precisely and enforcing them by law. We might even find it better to place many such burdens directly on the state, as the positive welfare rights of citizens, and bind ourselves to pay for them through taxation. Perhaps such agreements would be prudentially rational - and thus mandated by contractarian ethics. Narveson is obviously biased in favour of anarchic arrangements and against the state, but really he has proved nothing.

Chapter 18: Insurance Arguments and the Welfare State

In this chapter Narveson refrains from the extreme denunciations of the welfare state that doctrinaire libertarians are apt to produce, for which he is to be applauded. However, it is not clear that his reasons are always the correct ones - and not always clear which opinions are his and which others'.

His starting point is the argument that if a rational adult would take out medical insurance, and the like, a universal state system may be cheaper and more reliable, but will need to be compulsory to avoid free riders. The "libertarian reply" says that free-market-insurance can protect against whatever exigencies one needs protection from; but not against the exigency that the market may be unable to provide the protection at a price one can afford. However, compulsory protection may not be "enough" either (but on the other hand everyone gets the same generally affordable protection, whatever their particular circumstances). No contractarian argument, it is claimed, could yield a principle requiring some people to pay for things they don't want (but on the other hand, *why not*, so long as the *overall* consequences of the social contract are beneficial to them?). Nobody advocates compulsory social insurance except as a scheme popular with voters (but that's not true, since nondemocratic regimes also have similar arrangements, and in any case the popularity of a scheme is indeed evidence of its general utility). However, if it is highly popular, then a voluntary private scheme with essentially the same costs and benefits would also be possible (but a scheme where access to medical aid is dependent upon proving that one is adequately insured is *not* providing the same economic good as one that is free at the point of use).

From the contractarian view, libertarian systems dominate the alternatives, because rational persons can't be in favour of outcomes they're not in favour of (but persons *can* rationally be in favour of being forced to do what they otherwise wouldn't do - perhaps because they know they're *not* perfectly rational - and *can* rationally be in favour of forcing *others* to do what they otherwise might or might not do; everyone could rationally be in favour of compulsion, since compulsion can dominate free choice by excluding harmful but rational strategies like free-riding).

Narveson admits the psychological fact that "people find voluntary giving irksome when they would not particularly mind automatic deductions for the same purpose", while arguing that voluntary private schemes can be set up the same way. (However, part of what makes a compulsory scheme psychologically acceptable is the fact that *everyone* is contributing on the same basis; voluntary schemes just aren't the same. Surely it is rational and, in contractarian terms, moral, to arrange the social regime in a way that is psychologically acceptable to the mass of people? Or looking at it from the other side, surely it is *irrational* to arrange it in a *less* acceptable way?)

[In the above, the rejoinders in parentheses are mine].

Narveson contrasts the Canadian and American medical systems and concludes that the cost of subsidising the poor may be absorbed by the savings made possible by not bothering to discriminate against them - and that Canadians don't begrudge helping the poor this way anyhow. His case is strengthened when one realises that - quite apart from any element of charity - people are willing to pay considerably more for a health service free at the point of use. When one is sick, one doesn't want to have to be bothered with financial details. The extra contributions buy valuable peace of mind.

However, Narveson is mistaken in implying that the difference between public and private medicine lies in the administration cost alone. Far more important is the fact that the public system lacks the discipline of the market; its practitioners and administrators have no real way of knowing how well or badly they are doing, and have little incentive to improve; they have no customers in the ordinary sense, and no bottom line. This means that a public health service, though initially benefiting from cost savings over a competitive regime, and supplying a superior kind of good, will become progressively less and less efficient over time, eventually reaching the stage at which its main advantage over the market alternative, the guarantee of hassle-free service for everyone, evaporates, and the patient has to fight for treatment.

Now, it may be possible, within an overall regime of effective restitutional justice, to mandate the holding of adequate medical insurance while leaving everything else to the market, so that any provider of medical services could be sure of payment, and every patient could obtain treatment at need without worrying about having to pay; discriminating between patients at the point of treatment would then be unnecessary and we'd get the best of both worlds.

"Charity," says Narveson, "is an important and useful category in morals and moreover a reasonably clear one." I agree: to perform an act of charity is to give another person a benefit he has no prior right to. This is distinct from justice: to perform an act of justice is to give another person a benefit he does have a right to. It is also charity to give someone a benefit in the shape of a *right* he had no prior right to (such as a pension not previously contracted), but justice (and no longer charity) subsequently to give him the enjoyment of that right (the pensioner is entitled to his continuing allowance). Charity and justice are complementary but distinct. Charity *changes* the current bundling or ownership of rights but, unlike transactions by way of trade, does not demand compensation. If you seize another person's property and give it away without compensating him, you are being both charitable and a thief; he is not being charitable; he is simply a victim.

In a welfare state, recipients are *entitled* to their welfare benefits; these are their legal rights, not charity. However, whether the act of legislation that transferred those rights to them was an act of charity, a just trade, or theft depends on how it was carried out. If this form of insurance is mutually beneficial, the expected benefits outweighing the costs for (almost) everyone, it is Pareto compliant and a just trade, even though for many it may be a forced trade. If those who expect to have to pay over the odds to subsidise the poor are nevertheless happy to do so, this is charity. If there is a minority who would lose out, beyond their willingness to contribute voluntarily, they might legitimately be compensated in other ways (such as a one-off side payment). However, if one section of society is to be forced to suffer for the benefit of another, contrary to the prior bundling of rights and without adequate compensation, then we have an act of theft; note however that the theft subsists primarily in the act of wrongful or confiscatory legislation, rather than in the subsequent operation of the new set of rights.

The issue of whether or not we ought to include such welfare rights in our social arrangements is thus not one of fundamental principle (since in theory they can be introduced without injustice, even though we may doubt that they often will be) but of practical advantage; does such a bundling generate a net economic benefit, while maintaining appropriate incentives for efficient behaviour? The libertarian's answer, like the economist's, will usually be "no"; welfare rights tend to foster dependency and waste. Moreover, in weighing up the alternatives we should bear in mind that even in the absence of welfare *rights*, people can and will assist the needy through acts of charity; and such acts may be better targeted and more efficiently performed than similar activities under the auspices of public welfare.

The upshot is that, even if there is no duty to help others in a state of nature, we are rationally and morally justified in arranging our legal rights so as to create such duties within civil society (in a Pareto compliant way), if we expect this to be beneficial on balance. However, an interesting corollary is that even if we *do* have a moral duty to help others in a state of nature, we are justified in rebundling the corresponding moral rights (in a Pareto compliant way) into capitalist rights in a free market, if this is what we expect to be beneficial on balance; we are *not* rationally or morally obliged to maintain an inefficient and demoralising system of welfare rights.

Narveson gives an exegesis along broadly similar lines to the above, though in the form of a critique of some semantically obfuscatory arguments from Allen Buchanan he'd have done better not to let us get bogged down in. However, I think he is mildly in error in claiming that a strong set of "socialist" welfare rights would make true charity impossible, since one can always give people *more* than their due under any set of rights (because those rights define the area within which one is free to act); only in a regime that rejects rights altogether, for something like compulsory total egalitarianism, would there cease to be any scope for charity.

One interesting but perhaps not particularly relevant question is whether charity, as a rigorous philosophical category, is genuinely distinguishable from any other voluntary act; if you choose to give someone something beyond their due, you must in some sense prefer to do so, gaining altruistic satisfaction from benefiting another; so your action turns out to be Pareto compliant after all.

Chapter 19: *The Problem of Children*

In discussing the problem of children, Narveson makes several crucial philosophical errors. The first is the fallacy of distinct positive and negative rights criticised previously. The next is the claim that only rational beings can have "fundamental" rights; but whether we view rights as part of the natural order, as a consequence of an underlying absolute morality, or as growing out of a social contract, this does not follow. It does not seem incoherent to say that killing infants (or foetuses, or animals) would be wrong even in a state of nature - that infants (or foetuses, or animals) have a moral right not to be killed. It is indeed what most people believe, at least in regard to infants.

It may be that only competent and rational adults (with IQs above 150?) could truly participate in negotiations for a social contract, or appreciate what the rational form of agreement should be, but such hypothetical participants are in no way restricted to granting "fundamental" rights only to themselves. It is conceivable that it would be rational also to grant them to morons, madmen, children, infants, even foetuses or animals. Or androids. It is also conceivable that it would be rational to grant them to nobody - to say that different people have different rights, for instance.

Narveson seems to believe that a contractarian theory must automatically lead to a "fundamental" right of adult self-ownership, but, as I have pointed out before, this simply doesn't follow. It is fairly clear that we want a society in which most people control most of the rights in their own bodies most of the time - because they are the people normally in the best position to make best use of them. However, a society in which children are strictly the property of their parents, who made them, would also have the desired attributes - since most parents would presumably give their children self-ownership (or effective autonomy at least) at maturity (or occasionally by inheritance upon their decease). Indeed, just about *any* proprietarian society can Pareto optimise to give us approximately the result we need, whatever set of rights we start with.

It is by no means clear how a "rational" social contract should treat the question of ownership of the person. If there is to be one rule for "rational" adults and another for children, we shall have grave difficulty specifying any nonarbitrary procedure for discriminating between them. Indeed, given the strong emotional reactions we have about both children and our own autonomy, it is somewhat doubtful whether any social contract created by "thin" rational beings could have any real relevance to the human condition (a standard objection to Rawls's "original position" behind the "veil of ignorance", but scarcely less apposite to the contractarian enterprise).

Narveson suggests that we may be able to get duties to children out of public interest arguments, rather like those that we have seen could in principle justify a welfare state. Children are the world of tomorrow. However, the problem here (from a rational contractarian perspective) is that the public that benefits is a radically *different* public from the one that is currently participating in the social contract and being asked to make the concessions - a public one generation on. It would seem rather to be in the selfish interests of *today's* public to be at liberty to treat their children as pets or slaves, without necessarily giving them any consideration as distinct persons.

It may be that there are adequate libertarian solutions to the problem of children (for example, any other-owned entity capable of self-expression could take possession of itself by an act of theft, which in a system of restitutional justice would place it in debt to its former owner, due payment of which would leave it a free entity) but, all in all, Narveson has not offered any, doing little more than draw our attention to an area in which he readily admits the "contractarian-libertarian" line is likely to be badly at odds with ordinary opinion.

Narveson argues that education does not need to be in the public sector, even though there is an element of public good in the benefits of having a well-educated population. Schooling would cost less if there were a free market, and various charitable arrangements would be available for those few genuinely unable to afford it. I agree, though, as in his discussion on the provision of health services, he hasn't played the strongest free-market cards - that a socialist environment lacks adequate incentives for improvement, and the very capacity to judge performance objectively, whereas a competitive environment brings out the best. There is also the issue of state indoctrination and the hazard it poses to a free society.

I doubt whether the public benefits of education are anything like as great as the author imagines. PhDs commit fewer murders not because they've been to college but because they are more intelligent and urbane; it's the good behaviour that leads to the doctorates, not *vice versa*. It is true that there are strong externalities from *socialisation*, but this has little to do with formal schooling; children can also be socialised within the family, by playing with other children, and through gainful employment. It is questionable how much marginal *public* benefit arises from the practice of sending all children to school. *Over-education* could even cause net public harm, by fostering discontent. However, such considerations only strengthen the free market position.

Narveson objects that if there were a fundamental "human right" to education, we should have to demand equality of opportunity for everyone in the world, funded by the American taxpayer. Good polemics, but dodgy logic. Any such right would impose a duty upon each sovereign association in regard to those over whom it has authority; that is, it would be a right of any human being against the other members of the society of which he is part. It does not follow that either those rights or their correlative duties need apply beyond those jurisdictional bounds, and it is very hard to see how they could do so, in any meaningful way (except by an authority-pooling agreement between sovereign entities).

If there *were* such a fundamental right, every state would be morally bound to implement it within its jurisdiction; but it does not follow that any state would automatically have a right to force any *other* state to do so. Only if the human right were indeed a general right against everyone, irrespective of society, would a general right of cross-border enforcement also exist; this would be tantamount to claiming that the only legitimate authority is world government or that states are not sovereign, a view (in my opinion an extremely dangerous one) that is becoming increasingly popular.

Narveson contends that "Balkanisation" would not be a problem for a libertarian society. Here I think he may be too sanguine. True, many immigrants take pains to assimilate. But a great many others do not - quite the reverse, in fact. Still, this seems less a matter of education than of immigration policy.

Next Narveson discusses the "Orwin Thesis", which challenges the self-consistency of Nozick's libertarian utopia on the grounds that the framework for such a society is anything but neutral, since it requires the constituent communities to accept the overall libertarian or liberal view that no single conception of the good life is definitive. In my opinion, Narveson's attempted refutation is weak. Clearly the principles of *some* communities are compatible with a libertarian framework, with voluntary membership and freedom of exit, but by no means all. Nozick's utopia *does* have to exclude at least some conceptions of the good life - and this is a powerful reason for rejecting the notion that any single form of society or political framework, even a libertarian one, ought ever to be implemented universally.

Properly understood, a liberal worldview should be anti-ideological, with a place for every kind of state and stateless society; an ultraminimal state or free-market society might be the market leader, but we should not attempt to contrive an outright and universal monopoly, not even as an underlying framework. Nevertheless, let it be understood that this doctrine is indeed far from neutral; it necessitates at least a general recognition of and respect for the sovereignty of independent states and the autonomy of diverse societies. However, for liberals the over-riding moral principle should be freedom of choice - *not* neutrality.

Narveson proceeds to a discussion of freedom of speech, much of which, it seems to me, is wide of the mark, because it fails to take due account of the crucial philosophical point that speech is merely a subset of action. There is no fundamental right of free speech, any more than there is a fundamental right of free action; diverse people have diverse rights to diverse kinds of speech in diverse circumstances. How those rights are bundled is highly contingent upon the details of particular societies. Some constraints upon speech will be essential features of the law of any civil society - at least some promises and agreements have to be kept, and fraudulent or dishonest statements penalised, otherwise no social contract would be possible. Other constraints will exist as a natural consequence of other property rights (how I let you talk in my house is up to me - if you don't like my terms, don't come in).

It is no doubt reasonable to ask what society-wide constraints on speech may be most appropriate and beneficial, and to argue that speech ought not to be unduly constrained without good cause. However, it is our *overall* freedom, of which freedom of speech is only a part, that we should like to maximise; as with every other economic good, there are trade-offs.

Narveson notes that freedom of speech is mainly an issue in regard to public places (though everywhere not under the absolute ownership of a single individual is "public" to some degree, and, *contra* Narveson, public spaces or commons are *not* unowned - they are owned jointly or in common by the relevant public). He divides freedom of speech into academic freedom, freedom to proselytise, and freedom to chatter (though these categories are far from exhaustive and could be subdivided indefinitely).

The first may readily be defended "once one decides that one's goal is truth", and obviously truth *is* important to academics. It cannot however be the fundamental goal of libertarians, utilitarians or contractarians. Moreover, the assumption that "the truth shall make you free" itself amounts to the sort of religious intuition or dogma of which Narveson is so scathing, for he has given us no reason to suppose that discovering the truth is always a rational or beneficial goal; sometimes indeed, knowing the truth makes one unhappier (eg., upon learning that one's wife has been unfaithful). I would go further and say that *if* Narveson's materialist beliefs were persuasively shown to be true, and the only basis for morality to be self-interest, the consequences for mankind would probably be disastrous; almost everyone would be better off if people continued to believe in life-after-death and absolute right-and-wrong *even if those beliefs were in fact false*.

Of Narveson's ill-mannered attack on creationists I wish to say little, other than that it is untrue and unfair. The truth is this: atheists were and are using state schools and taxpayers' money to promote unscientific distortions of the theory of evolution (a theory by the way with so many holes and inconsistencies that in any other scientific field it would probably have been considered conclusively disproved); in particular the pretence that evolution and religion are opposed. Creationists wanted this abuse curtailed, or, failing that, for their beliefs (which after all approximate to the traditional beliefs of western society) to be given equal time with those of the materialists.

On page 294 the author briefly mentions what is actually a crucial principle for efficient legislation; namely, that if people are to be deprived of the liberty to do something that is harmful only in a minority of cases, the rest ought to be compensated for that imposition. Paying creates an incentive to avoid restrictions that have no *net* benefit. A corollary is that it is *legitimate* to impose such restrictions *provided that* we make full compensation.

In a "libertarian postscript" Narveson parrots the standard libertarian line that the drug problem is caused by anti-drug laws. It is true that such laws greatly increase the street price of illicit drugs, inducing many addicts to commit crimes in order to fund their habits; but the high price also, by the classic laws of economics, curtails demand. In the absence of anti-drug laws the total consumption and the number of addicts would almost certainly rise considerably. Now addicts also commit crimes under the direct influence of drugs, causing many innocent deaths every year; that death toll would rise markedly, perhaps catastrophically, under a regime of full legalisation. Furthermore, addicts are themselves victims - they are not in that situation through their own fully free and rational choice. Finally, the gangsters who infest the illegal drug trade would not simply become law-abiding citizens; they would turn their attention to other illegitimate sources of income and other criminal endeavours.

Chapter 21: *The Public and its Spaces*

Although I find Narveson's discussion of public property to be sound in the main, in places it is flawed in the same way as the chapter title above: there are *many* publics, not just one; and various types of public ownership too. If any particular sort of public is to be singled out it is perhaps the collection of persons comprising a civil society - all those persons lawfully within the jurisdiction of a sovereign state. However, in practice much more restrictive publics - the residents of a parish, for example - are often significant too.

Narveson debunks the libertarian myth that the only legitimate property is private property by pointing out that a great deal is owned collectively, not individually (eg., clubhouses and businesses), under arrangements voluntarily chosen by the persons concerned. To forbid people thus to combine their holdings would be to deny them that control over their disposition that is the essence of private property. So there is nothing illegitimate about collective ownership - even when the collective has a wide enough membership to be called a public - *unless* that membership is involuntary or wrongfully imposed (and even then it is unjust only if you suffer net loss as a result).

In the first part of the book, the author spelled out how property is not ownership of "things", but rather the ownership of a set of rights to act in various ways in relation to these things; and furthermore how that set of rights can be "fractured", so that different people come to own different rights in relation to the same things. This is especially important for real estate, where the rights bundlings are highly complex.

Perhaps Narveson could have made it clearer that when one buys a plot of land, what one buys is seldom if ever absolute ownership of that land but only a subset of the rights associated with that land. The rest of the rights will be owned - and retained - by other people, such as neighbours, the municipality, the public and the government (and it is of course quite legitimate for those other right-holders to follow their preferences in retaining their current holdings this way).

A social contract is itself an instance of public property - an agreement granting certain rights to the collective. In principle, the pooled rights could, on the one hand, be restricted to the sovereign authority to enforce the property rights of citizens, or, on the other, entrust everything and everyone to the care of the socialist community. It is an open question just what private-public bundlings may be optimal.

However, it is unlikely that any rational social contract would exclude the option of compulsory purchase for public use - though it would probably also make provision for full compensation. Without such an option, dogs-in-the-manger, such as extreme conservationists, would rule (or, more probably, be violently dispossessed or slaughtered). Historically, what Americans call eminent domain has usually arisen by a different route; land originally held by the crown or the state transferred into private ownership *subject* to the right of repossession, a procedure no less legitimate from a propertarian or contractarian perspective.

Zoning laws, and even real estate taxes, can also arise by either process (pooling rights or subdividing properties); some such constraints are clearly efficient (as Narveson points out, much of the value of a residential plot of land lies in the fact that it is surrounded by other such plots, not factories or warehouses), but others clearly are not, serving only as vehicles for petty officialdom. I don't suppose anyone - libertarian or not - considers the present arrangements ideal, so it is doubtful whether Narveson has succeeded in contributing anything very distinctive to the debate, as indeed he admits.

Nevertheless, the principle touched upon in the previous chapter - that where people are deprived of a liberty they ought to be compensated - has an important application here. It means that where we make *changes* in the zoning laws, building regulations and so forth, we ought to *pay* existing property owners for any ensuing reduction in the value or utility of their property. If a change is efficient, it will generate more than enough benefits to meet these costs; and if not, we shouldn't make it.

Probably the most important class of public property is exemplified in the road network, or, more accurately, in the network of public rights of way. Without such a network - open to all comers - people might find it impossible to go about their business without trespassing on other peoples' property; they might even become trapped in their own houses or elsewhere. In extreme cases, when permissions run out or are revoked, they might be unable either to stay or to leave.

Narveson argues that public ownership does not always guarantee access either, but he erroneously conflates public ownership (which in the case of rights of way means ownership in common, such that every member of the public has a right of passage along that route) and state ownership (under which granting the privilege of access is a prerogative of the state).

He attempts to derive a general moral principle whereby access could be guaranteed without the need for public ownership. I do not think he succeeds. In the first place, any "enforceable obligation to ... enable every[one] to go anywhere on earth" would simply be a public right of way by another name. Second, although a person might ideally *like* to be free to go absolutely anywhere, all we need for civil society is for (almost) every member of it to be able to reach (almost) any property within that particular society; indeed, it is largely the connectivity of the public rights of way that creates an integrated yet distinct society, so the network and the society are essentially coterminous. The right to travel freely within the borders of one's society may be vital; but apart from the right of exit, the right to travel freely beyond those borders is much less important. Third, rights of way are most valuable locally, where alternative routes are few or nonexistent and competition impracticable; long-distance trunk routes are much less problematic. Fourth, in a smoothly functioning society we need to be able to reach properties on the network *without* having to obtain prior permission from the owners, even though they may then deny us entry and send us away (or, more usually, we get no answer because they're out). Finally, it is quite unlikely that the members of a society negotiating a social contract would wish to grant outsiders unlimited access to or through their territory; it is in their interests - and it is surely their right - to control and restrict passage across their own frontier.

Narveson then gives what he himself admits is a "caricature" of the "standard system" (in my view, "total fabrication" would be closer). It is simply not true that everything is put into the hands of a single agency with a monopoly of force ("the" police). Upholding public *rights* of way is the duty of the courts; maintaining the public roads is the duty of the various municipal owners or highway authorities; building the roads is the function of developers. The various police forces hardly come into it at all, and central government not very much more.

Libertarians typically fail to appreciate that developers are *already* at liberty to build and run private road networks if they so choose. They seldom do because roads are a natural near monopoly; the market solution is generally municipal ownership of (most of) the roads, with common ownership of rights of way. The alternatives of commercial and residents' ownership have been tried and found wanting; for the most part such arrangements survive only where, for whatever reason, the municipality has refused to adopt the roads in question; they are unpopular with all but a small minority of property owners.

Narveson asks why roads going up to international boundaries invariably continue right across. The answer is that they don't. Other than major highways, most roads in the vicinity of long-standing international borders do *not* cross them, and those that do usually carry considerably less traffic than comparable domestic roads. Often there are roads paralleling the frontier on either side, so people don't have to keep leaving and re-entering the country.

The rest of this chapter relates to the practice of discrimination (which doesn't seem to have much to do with public spaces, but never mind). Narveson sensibly defines a discriminatory act as consisting in treating one person in a manner that is less desirable than the treatment given to another person instead. Discrimination is clearly unjust if it violates any rights (not only "fundamental" rights), and, *by definition*, it is not unjust if it doesn't; injustice is neither more nor less than denying someone something to which he has a right. Where people have a right to equal treatment (conceivably by a clause of the social contract) discrimination would be wrong. It might also on occasion be morally wrong, or at any rate imprudent or inefficient, even in the absence of a specific right. However, whether such rights are generally useful or beneficial (other than in technical matters like the treatment of shareholders) is doubtful at best.

Narveson argues that discrimination in business (selecting personnel on a basis other than competence, such as sex, race or religion) is not cost effective, because it consists in hiring less competent people for the same money. However, this is fallacious.

Under perfect competition, the employer could still get *equally* competent staff for the same money. More realistically, the marginal reduction in competency he suffers by rejecting what would otherwise be his first choice will be slight. The effect of his discrimination on the market is marginally to increase the demand for the more favoured group and marginally to decrease it for the less favoured one; however, if there is genuinely no systematic difference in competency, other employers will discriminate in the opposite direction; at equilibrium, each employer will be able to obtain his preferred type at the same rate as in the nondiscriminatory regime.

It goes further. As a rule, employees will themselves prefer to work mainly with others of the same type ("birds of a feather flock together"); they will be willing to work for lower salaries, or to work harder, than if they were required to work in less congenial company. So the employer gains by discriminating. The tendency will be for firms to differentiate themselves by the make-up of their staff; some will be mainly white, others mainly black. The same applies to their customers, who again would rather be served by their own kind, and will be willing to pay for it. Of course, some people would prefer more cosmopolitan arrangements, so there will be other firms that take positive steps to get a good mixture. Still others might not be bothered one way or the other.

The net effect of such discrimination is *higher* efficiency overall. Everyone (or almost everyone) benefits; employers, employees and customers; black and white, men and women, old and young. Remember, discrimination is not just one way; any group can always favour itself, providing positive discrimination in due proportion to its share of the whole population. In the limit, a society could disengage into discrete sub-societies, one for each of the groups, each with initially the same *per capita* physical wealth and economic performance as before, but with a significantly greater subjective satisfaction and probably a somewhat higher long-term economic growth rate. And, in a way, that's what has actually happened in the real world; these "sub-societies" are what we usually call nations or countries.

Chapter 22: Defence and International Relations

Narveson argues that libertarian societies will seldom go to war with each other. He quotes Michael Doyle, who finds that "even though liberal states have become involved in numerous wars with nonliberal states, constitutionally secure liberal states have yet to engage in war with each other" (a slight overstatement, perhaps, but broadly true).

However, the term "liberal" is a little misleading; here it means political pluralism, a "liberal state" being one with representative government. Obviously such a regime cannot be totalitarian in nature, but nor is it necessarily particularly free. Nowadays most of them are increasingly oppressive welfare states. The key feature of a *polis* or political regime is that it lacks unity; it comprises various factions vying for power, albeit for the most part non-violently. This is why, so long as it remains a *polis*, it will rarely go to war with another *polis*; politicians will often have more in common with their foreign counterparts than with their domestic opponents, so the degree of consensus required for war is unlikely (except when the country is directly threatened, or a crusade mounted against a radically alien "nonliberal" regime).

A libertarian state would not be a political regime, in this sense, so the evidence does not carry us across automatically; nevertheless, a similar lack of consensus might be expected. On the other hand, within Nozick's utopia, or still more under anarcho-capitalism, we could certainly imagine the constituent communities going to war - each united in beliefs strongly held yet incompatible with those of other communities.

We should be cautious about accepting the claim that wars would be impracticable without taxation or conscription. Historically, most armies have been largely self-supporting and composed mainly of volunteers; war was to a large extent optional (unless, of course, you found yourself in the path of a marauding army - and even then you could usually

flee instead of fighting). This was especially true of wars of conquest (enterprises libertarians would have to consider acts of aggression). War was often profitable too (for the victors, that is).

Narveson does not give much guidance on how a libertarian society (by which in this context he probably means an anarcho-capitalist society, as distinct from a minimal or ultraminimal state) should organise its defences, nor even whether it would be at all capable of doing so. "In a major defense effort the need for ... coordination is ... unlikely to be met by a situation of extreme liberty ... [this weakness] will have to be ... accepted as part of the price of liberty." Yet if such a society were unable to defend itself adequately, this would not be a *price* of liberty, but a *cost* of attempting the impossible; the product would not be freedom, only defeat.

On the question of international relations, Narveson considers that "it is surely very difficult to render philosophical advice to states in their mutual relations". I don't think it is. The simplest rule and best advice is: mind your own business. Don't interfere.

Narveson himself wisely says, "a governmental policy of minimising bloodshed ... is surely to be generally commended ... not only because shedding blood invites and invariably leads to retaliation, but also out of a sense of realism about what can be accomplished."

More fundamentally, freedom of choice often means letting people do things we don't like or consider foolish; and that applies to their political life no less than to their personal lives. We have no right to impose our way of life on other societies or to dictate their laws; nor do we have the wisdom that might enable us to do so only when the consequences would be beneficial. In this as in ordinary trade, free competition is how we learn. It is better to teach by example than by the sword - especially since there is no proof that the sharpest sword will always write the most penetrating sermon.

The use of force between states is no less an abrogation of the principle of property than is force between individuals, and respect for their distinct sovereignties no less important than respect for an individual's property rights. Attack the one and you attack the other.

This is not to deny that states may legitimately use force when threatened, or to protect their own rights or interests; and of course there can be difficult cases in which it is not clear whether or not intervention is justified (for example, Western involvement in third-world conflicts during the Cold War, as a response to the aggression intentions of the Soviet Union). Still, the basic maxim of non-interference is surely sound.

Pace the creators of Star Trek, non-interference does not mean refusing to do anything that may change the culture of an alien society; it means that whenever we are in other peoples' territory we must accept, abide by, whatever laws they have, not impose on them contrary to their customs. But if lawful trade or lawful intercourse changes them, so be it. One minor point, *pace* Narveson: it *is* possible for persons to have a right not to be *intentionally* killed, rather than a right not to be killed *simpliciter* (something of the sort is usual in hazardous sports); but this is unlikely to apply to the circumstances of the "double effect" doctrine he quite properly rejects.

Finally, Narveson notes that the legal order is a capital asset, which violent revolution would destroy, with no guarantee that its replacement would be any better (and considerable historical evidence that it is likely to be worse); even radical change by lawful means may dissipate a large part of the "income flow", which it will take time to restore. Wherever practicable, less drastic measures are to be preferred.

Epilogue: *Reflections on Libertarianism*

In his concluding remarks Narveson has some advice for the libertarian, noting that his battle is an uphill one against apathy, affection for the state and lack of rallying cries; but it is not necessary for him to go into formal politics, where he is unlikely to be successful, and which in any case sits uncomfortably with his espoused aim of depoliticising as much as possible; the challenge for him is to design effective and acceptable alternatives to the statist arrangements he deplores. As the author says: put up or shut up.

Narveson rejects what he considers the hysterical approach of speaking of "reversing the rising tide of state activity before it is too late, as though some kind of specific catastrophe looms before us". Disasters represent extreme and improbable extrapolations; the superiority of alternatives will be increasingly evident at the margin; "the need is for specific and workable solutions, not for grand gestures or sweeping rhetoric."

In many respects, he says, the libertarian's proposals may be interesting but not all that terribly important; the suburbia that intellectuals may decry but which the average man enjoys has both comfort and freedom in considerable measure; so despite the ordinary man's frequent dissatisfaction with the detailed policies of the government of the day, libertarianism is not something he actually *needs*.

In part, I would argue, that is because the legal order in which we live already embodies the most important principles of libertarian thought - those of respect for property rights, compensation for breach, and procedural justice - to a much greater extent than radicals are apt to admit. It does not always embody them well, and surely we need to work at keeping it up to the mark, but we should not underestimate the freedom we have long possessed. The libertarian idea is not new; it is the ancient call for liberty and justice by a new name.

To the theologian, the standard answer to the problem of evil (how could a good God permit evil to flourish) is that it is necessary in order for us to have freedom of choice. It is to Narveson's credit that he does not duck the secular problem of evil (how could a world without violence be other than dismally boring), to which libertarianism has no real solution. As he says, the problem, in a nutshell, is that evil is one of our goods. He suggests that the best we can do may be to create voluntary conflicts of lesser dimensions, like sports, or move to the world of imagination or fiction; but I cannot believe that this will be sufficient; such substitutes are just not *important* enough, or, without real-life counterparts, *credible* enough.

Narveson sums up his thesis by claiming that he has attempted to establish, by contractarian reasoning, that libertarianism is a rational doctrine. I do not believe he has succeeded. Still less has he established that the sort of thing he calls a rational doctrine is something we *should* want, or do want, as the foundation of our morality.

Let us be clear. That our actions and ethical systems should be generally consistent with or rationally derivable from the fundamental values we have (or, perhaps, ought to have) is plain enough. In this sense rationality is vital. However, those values are not in themselves amenable to reason; they are whatever they are.

To argue against someone else's fundamental values is to appeal to the sort of intuition Narveson claims to despise. To insist that for contractarian analysis only allegedly "pre- or non-moral values" count is the height of arbitrariness (if it is not simply incoherent). Yet if morality flows merely from self-interest, as he contends, the values that underlie it must be purely subjective; the preferred option is the one you prefer, *whatever* the source of that preference. Moral values are no less real than aesthetic ones.

Narveson admits an imperfection in dealing with "fanatics" and "psychopaths". Yet the sort of values he ascribes to such awkward cases, and accepts that contractarianism cannot handle, are only extreme instances of the sort of values almost all of us consider important in varying degrees.

Now, it may well be that what almost all people want is sufficiently compatible that a social contract should be rationally acceptable to them all as the best means of obtaining it. That is to say, although they may all have to compromise to some extent, the civil order based on that contract may give them more of what they actually want (including adherence to religious, philosophical, political and aesthetic beliefs) than any available alternative. If so, a consistent contractarian ethics should be derivable, and it is not unlikely that such an ethics would have to be broadly libertarian, or at any rate, liberal.

However, Narveson has not proved even this much. He has not proved that personal values are sufficiently compatible that accepting a social contract would be in everyone's best interest, nor, if so, whether, given practical and epistemological limitations on their knowledge and understanding, they all should be, or could be, rationally convinced of it. Nor has he proved that such social contracts would be anything like universal, or mutually compatible, nor, given the likelihood of rational strategic bargaining based upon prior threat positions, anything like libertarian. He has not even proved that the contract of thin purely self-interested rational entities behind a veil of ignorance would be libertarian.

Thus, despite having given us much food for thought and having described a more pragmatically appealing and credible kind of libertarianism than most radical writers, Narveson's claim to have provided a philosophically rigorous contractarian foundation for libertarianism must be rejected.

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